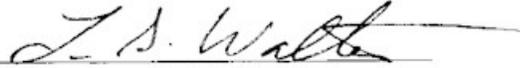


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: October 05, 2005

  
Lawrence S. Walter  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

In re: U.S. AEROTEAM, INC.,  
*Debtor-in-Possession*

Case No. 03-41063  
Adv. No. 04-3047

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U.S. AEROTEAM, INC.,  
*Plaintiff*

Judge L. S. Walter  
Chapter 11

v.

DELPHI AUTOMOTIVE SYSTEMS, LLC,  
*Defendant*

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**AMENDMENT TO COURT’S DECISION ON SUMMARY JUDGMENT:**

- 1) DENYING SUMMARY JUDGMENT TO DELPHI AUTOMOTIVE SYSTEMS, LLC ON ITS RECOUPMENT CLAIM; AND**
  
  - 2) DENYING DELPHI AUTOMOTIVE SYSTEMS, LLC’S REQUEST FOR DELAY OF THE TRIAL IN THIS MATTER.**
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The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334, and the standing General Order of Reference in this District. This proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). This matter is before the court on Delphi Automotive System, LLC's Limited Motion Pursuant to Bankruptcy Rule 9023 and Rule 59(e) of the Federal Rules of Civil Procedure for Amendment of the August 1, 2005 Order Granting Partial Summary Judgment to Defendant Delphi Automotive Systems and Denying Summary Judgment to Plaintiff U.S. Aeroteam, Inc. [Doc. 61] and the Response filed by Plaintiff U.S. Aeroteam, Inc. [Doc. 68].

### **PROCEDURAL BACKGROUND**

On August 1, 2005, the court entered its decision on the cross-motions for summary judgment filed in this adversary proceeding by Plaintiff U.S. Aeroteam, Inc. ("USAT") and Defendant Delphi Automotive Systems, LLC ("Delphi"). [Doc. 57.] The court granted Delphi summary judgment on a portion of its setoff claim and denied summary judgment to USAT. The court determined that there were factual issues as to the remainder of Delphi's claim for setoff that must proceed to trial.

Significantly, the court decided not to address Delphi's alternative claim for recoupment of a specific portion of funds related to the assigned claim of Texas Foundries. [Doc. 57, p. 12, n.8.] Because Delphi had a valid claim for setoff of the Texas Foundries claim, the court determined that it need not resolve the alternative cause of action for recoupment of that same claim. *Id.*

Following the entry of the court's decision on summary judgment, Delphi filed its motion requesting an amendment of the decision. Delphi requests that the court amend its decision to resolve the recoupment claim because an action for recoupment, unlike setoff, is not limited by the automatic stay or § 553's limitation on a creditor's ability to exercise a setoff against debts

owed to the debtor incurred during the ninety days prior to the bankruptcy filing and while the debtor is insolvent. Consequently, Delphi requests that the court address the sufficiency of its recoupment claim to avoid these setoff limitations. The court will oblige Delphi's request and address its claim for recoupment in this amendment to the court's determinations on summary judgment.

In addition, Delphi requests a delay of the trial in this adversary proceeding on the remaining issues because at least some of those matters may be impacted by the resolution of a separate adversary proceeding. The court concludes that this request is not properly considered on summary judgment, but is instead an issue for the court to consider as part of its case management. Consequently, the court will refrain from determining when to hold a trial in this matter until after consultation with the parties during a status conference.

### **FACTUAL BACKGROUND**

Delphi wants to recoup the Texas Foundries assigned claim against USAT from the accounts payable that Delphi owes to USAT for certain component parts. The facts related to the assigned claim and the accounts payable, as stated in the court's prior decision on summary judgment and/or the parties' documentary evidence submitted on summary judgment, are as follows:

USAT contracted with the Energy and Chassis Systems division of Delphi ("E & C") to produce a part known as the hub and motor extension assembly ("HUB Assembly") and began production of the part in August of 2001. The parties' contractual relationship with respect to the HUB Assembly, as well as other parts purchased by Delphi from USAT, was documented in purchase orders used by the Delphi divisions to purchase parts from USAT which USAT accepted by shipping parts to Delphi at stated prices. [Adv. Doc. 30, ¶ 8; Adv. Doc. 35, ¶ 10 and Adv. Doc. 36, Ex. 1 (summary of purchase orders).] The purchase orders set the prices for the

relevant parts through a date certain. [Adv. Doc. 30, ¶ 8.] The purchase orders obligated Delphi to order all of its specified parts through USAT and required USAT to deliver to Delphi a sufficient quantity of the parts to meet Delphi's production needs. *Id.* Delphi asserts that the failure of USAT to deliver the component parts it was contractually obligated to deliver could cause a shut down of manufacturing operations and irreparable harm to both GM and Delphi. USAT disputes that its ability to supply parts to Delphi could force such a shut down.

The purchase orders were subject to Delphi's General Terms and Conditions governing the terms of shipping, billing, quality, termination and other aspects of the parties' contractual obligations. [Adv. Doc. 36, Ex. 2.] Section 21 of the General Terms and Conditions, entitled "Setoff and Recovery," states:

With respect to any monetary obligations of Seller [USAT] or Seller's affiliates to Buyer [Delphi] or Buyer's affiliates, Buyer may (i) setoff such obligations against any sums owing to Seller or Seller's affiliates and/or (ii) recoup such obligations from any amounts paid to Seller or Seller's affiliates by Buyer or Buyer's affiliates.

*Id.* USAT does not dispute that the purchase orders were subject to the Terms and Conditions including this paragraph providing Delphi with setoff and recoupment rights. [Adv. Doc. 41, ¶ 11.]

USAT purchased component parts for the HUB Assembly from other companies. [Adv. Doc. 30, ¶ 17.] HUB bearings were purchased from SKF Bearings, HUB castings from Texas Foundries and the rotors from E & C. [Adv. Doc. 30, ¶ 17-18.] USAT's purchase of the rotors from E & C was a separate transaction from E & C's purchase order with USAT to produce the HUB Assembly. [Adv. Doc. 30, ¶ 19 and Ex. A, ¶12.]

In the beginning, USAT paid all of the suppliers of the component parts needed for the HUB Assembly. [Adv. Doc. 30, ¶ 16.] In late 2002 to 2003, however, USAT began having trouble paying its suppliers.

USAT stopped paying E & C for the rotors in 2002. [Adv. Doc. 35, ¶ 18.] As of the petition filing date, the accounts payable owed by USAT to E & C for the rotors totaled \$567,683.84. [*Id.*; Adv. Doc. 41, ¶ 18.]

With regard to the castings, USAT accumulated accounts payable owed to Texas Foundries in the amount of \$187,436.84. [Adv. Doc. 35, ¶ 19; Adv. Doc. 41, ¶ 19.] At some point in August of 2003, Delphi received notice of the accumulation of USAT's debt to Texas Foundries and Delphi feared that Texas Foundries would stop shipment of the castings absent full payment. [Adv. Doc. 39, Ex. A, ¶¶ 8-9.] The parties dispute the exact timing and nature of the notice, but agree that in late August of 2003, a series of correspondence occurred between employees of USAT, Delphi and Texas Foundries regarding USAT's troubled operations. [*Id.*, ¶¶ 7-9; Adv. Doc. 41, ¶ 19.] On summary judgment, USAT objects to the presentation by Delphi of certain e-mails from Texas Foundries as impermissible hearsay.

The undisputed facts include that at 12:05 p.m. on August 26, 2003, USAT employee Jeff Milam sent an e-mail to George Mansfield and Thomas Dunn at Delphi advising that USAT wished to resolve the matter with Texas Foundries without the assistance of Delphi regarding the "old payables" owed to Texas Foundries. [Adv. Doc. 30, Ex. A-6.] USAT requested that Delphi limit its assistance to consignment of materials moving forward. *Id.* Nonetheless, at 2:16 p.m. on August 26, 2003, Thomas Dunn emailed Texas Foundries with Delphi's commitment to pay the \$187,436.84 owed by USAT to Texas Foundries. [Adv. Doc. 36, Ex. 6; Adv. Doc. 41, ¶ 19.] In exchange, Texas Foundries was to assign to Delphi all rights in the corresponding receivables. [Adv. Doc. 36, Ex. 6.] Texas Foundries agreed to Delphi's terms and released production and shipment of the castings. *Id.* Delphi and Texas Foundries did not document their agreement with purchase orders and invoices until November of 2003. [Adv. Doc. 41, ¶ 19.]

Furthermore, Delphi did not pay the \$187,436.84 owed to Texas Foundries until January 7, 2004, following USAT's bankruptcy filing. [Adv. Doc. 35, ¶ 20; Adv. Doc. 41, ¶ 20.]

Delphi asserts its recoupment claim for the \$187,436.84 payment of USAT's obligation to Texas Foundries as a defense to turnover of funds Delphi owes to USAT. Specifically, Delphi wants to recoup the amount of the assigned claim from the accounts payable that Delphi owes to USAT under the HUB Assembly purchase orders that accrued during the ninety days prior to bankruptcy. USAT does not dispute Delphi's assertion that the amount of payables owed by Delphi under the HUB Assembly purchase orders accrued during the ninety days prior to USAT's bankruptcy were in excess of its \$187,436.84 recoupment claim. [See Doc. 61, ¶ 12.]

### **SUMMARY JUDGMENT STANDARD**

The court applies the summary judgment standard contained in Fed. R. Civ. P. 56(c), incorporated in bankruptcy adversary proceedings by reference in Fed. R. Bankr. P. 7056, to Delphi's request for summary judgment on its recoupment claim. A more detailed description of that standard is contained in the court's original decision on summary judgment.

### **LEGAL ANALYSIS**

#### **A. Recoupment**

In its previous decision on summary judgment, the court analyzed setoff which allows parties to offset mutual debts generally arising from *separate* transactions. *In re Gaither*, 200 B.R. 847, 850 (Bankr. S.D. Ohio 1996). In contrast, recoupment pertains to the setting up of a demand arising from the *same* transaction as the plaintiff's claim. *Id.*; *Photo Mechanical Services, Inc. v. E.I Dupont De Nemours & Co. (In re Photo Mechanical Services, Inc)*, 179 B.R. 604, 612 (Bankr. D. Minn. 1995). More specifically, recoupment is the right of a defendant in the same action to reduce or abate a plaintiff's claim because the plaintiff has not complied with some cross-obligation of the same transaction. *See In re Dunning*, 269 B.R. 357, 369 (Bankr.

N.D. Ohio 2001); *Harris v. Scotsman Queen Products Division of King-Seeley Thermos Co. (In re Handsco Distributing, Inc.)*, 32 B.R. 358, 359 (Bankr. S.D. Ohio 1983). The court notes that recoupment is a non-statutory remedy that prefers one creditor over another contrary to the Bankruptcy Code's strong policy favoring equal treatment of creditors. *New York State Electric and Gas Corp. v. McMahon (In re McMahon)*, 129 F.3d 93, 97 (2<sup>nd</sup> Cir. 1997); *In re American Sunlake Ltd. Partnership*, 109 B.R. 727, 730 (Bankr. W.D. Mich. 1989). Consequently, the recoupment doctrine is a limited one that should be narrowly construed. *McMahon*, 129 F.3d at 97; *American Sunlake*, 109 B.R. at 730.

The key requirement to recoupment is that the cross-claim arise from the same transaction as that for which the debt was incurred. *Reeves v. Columbia Gas of Ohio (In re Reeves)*, 265 B.R. 766, 770 (Bankr. N.D. Ohio 2001); *Handsco Distributing*, 32 B.R. at 360. Consequently, valid recoupments are generally restricted to cross-claims arising out of one contract and may even be restricted to cross-obligations arising from a single provision of one contract. *Dunning*, 269 B.R. at 370; *Reeves*, 265 B.R. at 770-71.

Courts have allowed recoupments involving more than one contract in limited circumstances when the contracts are "integrated" and involve reciprocal and dependent obligations. *Reeves*, 265 B.R. at 771 (utilizing a fact-based approach that looks at the intent of the parties when entering the contracts; if it was intended that the parties' performance of the obligations giving rise to opposing claims were dependent on each other, "then equity holds that such claims should be deemed to have arisen from a single integrated transaction"). Based on this approach, recoupment has been allowed when an insurance company's continued obligation to pay a debtor benefits in one contract was contingent on the debtor signing a separate agreement to repay any overpayments received. *Sigman v. Aetna Life Ins. Co. (In re Sigman)*, 270 B.R. 858, 861-62 (Bankr. S.D. Ohio 2001). In contrast, the doctrine of recoupment did not

apply to a company attempting to recoup loaned advances to a debtor-employee from the earned commissions owed to that same employee. *In re Passafiume*, 242 B.R. 630, 635-36 (Bankr. W.D. Ky. 1999). The commissions and loaned advances arose from several independent contracts and, at best, language in the subsequent loan agreement allowing the company to offset loaned funds against earned but unpaid commissions was nothing more than an afterthought and did not give rise to an integrated transaction. *Id.* at 635.

Delphi has cited a decision holding that a defendant who took “prudent steps” to mitigate damages following a plaintiff-debtor’s breach of contract could recoup the damages from the plaintiff who sued the defendant for using its equipment to complete the project. *Newbery Electric, Inc. v. MCI Constructors, Inc. (In re Newbery Corp.)*, 145 B.R. 998 (9<sup>th</sup> Cir. B.A.P. 1992) *withdrawn on other grounds*, 161 B.R. 999 (9<sup>th</sup> Cir. B.A.P. 1994). In that case, the court deemed the entire set of circumstances to be one transaction based on the defendant’s general duty to mitigate its damages following a breach under the initial contract. *Id.* at 1001. However, this decision contains a strong dissent stating that the defendant’s independent actions in using the plaintiff’s equipment to mitigate its own damages was not contemplated as part of the parties’ initial contract. *Id.* at 1004-05. According to the dissent, the cross-claims are not “integral” to each other and cannot be considered one transaction for recoupment purposes. *Id.* This court agrees with the carefully considered dissent in *Newbery* supporting a narrow construction of recoupment: unless two separate contracts are “integrated” and involve reciprocal and dependent obligations, they cannot support a defendant’s claim for recoupment.

In the case at hand, the cross-obligations asserted by Delphi clearly arise from two contracts: 1) Delphi’s agreement with Texas Foundries to pay USAT’s debt in exchange for continued shipment of parts and an assignment of Texas Foundries’ claim against USAT; and 2) the HUB Assembly purchase orders requiring Delphi to pay for parts assembled by USAT. For

the doctrine of recoupment to apply, these two contracts must contain dependent and reciprocal obligations so closely intertwined that the contracts may be considered one integrated transaction.

After a thorough review of the facts presented on summary judgment, the court concludes that Delphi's agreement with Texas Foundries is a separate and independent transaction from the purchase orders. In the HUB Assembly purchase orders, Delphi agreed to pay USAT for the assembly of certain components. Although these purchase orders were subject to Delphi's General Terms and Conditions giving Delphi the right to recoup amounts owed by USAT from USAT's affiliates [Adv. Doc. 36, Ex. 2, Section 21], neither this provision nor the purchase orders themselves contemplate Delphi receiving a right to recoup amounts from USAT for Delphi's voluntary payment of USAT's monetary obligation to a third party supplier. In fact, Delphi provides no evidence on summary judgment that Delphi and USAT entered the HUB Assembly purchase orders with the understanding that Delphi could pay a third party supplier and obtain a right of recoupment against USAT.

Instead, the facts support that Delphi made an independent and voluntary decision to pay USAT's debt to Texas Foundries long after Delphi contracted with USAT respecting the HUB Assembly purchase orders. Although Delphi argues that it paid USAT's debt to Texas Foundries because it believed this second agreement was necessary to mitigate damages and irreparable harm arising from USAT's difficulties in meeting its obligations pursuant to the HUB Assembly purchase orders, there was no obligation for Delphi to do so arising from the purchase orders. The court concludes that the two contracts at issue, between Delphi and USAT on the one hand and Delphi and Texas Foundries on the other, contain only independent and non-reciprocal obligations. Consequently, they do not form a single transaction for recoupment purposes and the court denies Delphi's request for summary judgment on this matter.

**B. Timing of Trial on Insolvency of Debtor / Remaining Setoff Issues**

As a final matter, Delphi requests that the court consider delaying the trial to determine the remaining setoff issues in this adversary proceeding until after the resolution of a separate adversary proceeding, *U.S. Aeroteam, Inc. v. Delphi Automotive Systems, LLC*, Adv. No. 04-3110. In Adv. No. 04-3110, USAT filed a complaint requesting \$2.2 million from Delphi in cancellation of contract damages. Although not specifically related to the case at hand, the \$2.2 million cancellation claim could impact a determination as to USAT's insolvency during the ninety days prior to bankruptcy and, consequently, Delphi's entitlement to setoff of its payables accrued during this period under § 553.

For this reason, Delphi requests the trial in this matter be delayed until after resolution of the other adversary proceeding. USAT argues against delay asserting that the litigation in the cancellation of contract adversary proceeding, presently before the United States District Court on Delphi's motion for withdrawal of the reference filed on July 21, 2004, could be protracted. USAT asserts that the value of the cancellation of contract claim should be estimated for purposes of this adversary proceeding.

The court has carefully considered both arguments and concludes that this is not a matter to be determined on summary judgment, but is instead a case management determination regarding the appropriate timing of the trial in this matter. For this reason, the court denies Delphi's request that it be determined as part of the court's amended decision on summary judgment. The court will, instead, make its determination as to the appropriate timing of the trial in this matter following a status conference with the parties.

**CONCLUSION**

The court concludes that Delphi has failed to provide facts supporting its claim for recoupment and, consequently, summary judgment on its recoupment claim is **denied**.

The court further denies Delphi's request to delay the trial in this matter. The court will determine the appropriate timing of the trial following a status conference with the parties.

**SO ORDERED.**

cc:

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