

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

_____)	
In re:)	Case No. 10-60702-rk
)	
SCHWAB INDUSTRIES, INC., et al,)	<i>Chapter 11</i>
)	
Debtors.)	Jointly Administered
)	
)	JUDGE RUSS KENDIG
)	
_____)	

**OBJECTION OF ST. MARYS CEMENT CO. TO DEBTORS' MOTION
SEEKING ENTRY OF ORDER (I) AUTHORIZING POSTPETITION SECURED
SUPERPRIORITY FINANCING PURSUANT TO BANKRUPTCY CODE
SECTIONS 105, 361, 362, 363(C), 363(E), 364 (C)(1)-(3), 364 (D) AND 364 (E), (II)
GRANTING ADEQUATE PROTECTION PURSUANT TO SECTIONS 361, 363
AND 364 OF THE BANKRUPTCY CODE, (III) MODIFYING THE AUTOMATIC
STAY AND (IV) SETTING A FINAL HEARING PURSUANT TO BANKRUPTCY
RULE 4001.**

St. Marys Cement Company ("St. Marys"), by and through counsel, hereby objects to Debtors' Motion Seeking Entry of Order (I) Authorizing Post-Petition Secured Superpriority Financing Pursuant To Bankruptcy Code Sections 105, 361, 362, 363(c), 363(e), 364(c)(1)-(3), 364(d) and 364(e), (II) Granting Adequate Protection Pursuant to Sections 361, 363 and 364 of the Bankruptcy Code, (III) Modifying the Automatic Stay and (IV) Setting a Final Hearing Pursuant to Bankruptcy Rule 4001 (the "Motion").

For and as its Objection, St. Marys respectfully states the following:

1. St. Marys has made a reclamation claim for goods delivered to Debtor Medina Supply Company ("MSD") under 11 USC § 546(C) and Ohio Rev. Code § 1302.76.
2. The 6th Cir. specifically holds that "Ohio Rev. Code 1302.76(B) grants a properly reclaiming vendor... a right to reclaim its goods and that 1302.76(C) does not

allow a secured creditor's claim to defeat that right." Phar-Mor, Inc. v. McKesson Corp., 534 F.3d 502 at 508 (2008).

3. It would be inequitable for any secured creditor to deny the defrauded seller's right to reclaim as provided by ORC § 1302.76(B).¹

4. The approval of this credit facility will take away St. Marys right to reclaim its goods.

WHEREFORE, St. Marys respectfully requests: (i) that the Court include St. Marys reclamation claim as an administrative expense in the "Carve Out" as provided by the Motion and (ii) that the court grant to St. Marys such other and further relief to which it may be justly entitled.

Respectfully submitted,

/S/ Matthew Thomas

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¹ The 6th Cir. finds In re Am. Food Purveyors, Inc., 17 UCC Rep. Serv. 436 (Bankr. N.D. Ga. 1974) persuasive. Phar-Mor, at 507-08. Specifically that "the creditor acquired no rights in the collateral as required under UCC 9-204 in regard to the goods. A secured party's rights, generally speaking, against the debtor's vendor are no greater than the debtor himself." Id. In addition, the 6th Cir. agreed that "for the period in question, the debtor/buyer could not have sustained an action in equity to keep these goods. All of the rights during this period were with the defrauded seller." Id.

CERTIFICATE OF SERVICE

Matthew Thomas hereby states that this document was filed electronically with the Court on this 12th day of March, 2010, and that the parties listed on the Court's Electronic Mail Notice List received copies of the same via e-mail from the Court. The following parties also received a copy of this document by facsimile:

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