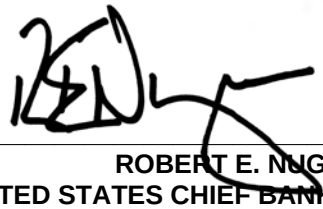
SO ORDERED.

SIGNED this 12 day of June, 2007.



ROBERT E. NUGENT
UNITED STATES CHIEF BANKRUPTCY JUDGE

NOT DESIGNATED FOR PUBLICATION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE:	)	
	)	
DYNAMIC TOOLING SYSTEMS, INC.,	)	**Case No. 04-15900**
	)	**Chapter 11**
Debtor.	)	
	)	
R & F INTELLECTUAL PROPERTY ACQUISITION, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Adversary No. 06-5476**
	)	
HANTOVER, INC.,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION TO GRANT HANTOVER, INC.'S MOTION TO WITHDRAW THE REFERENCE OF THIS ADVERSARY PROCEEDING

Defendant Hantover Industries, Inc. ("Hantover") seeks an order from the District Court withdrawing the reference of this adversary proceeding from the Bankruptcy Court for cause as provided for by 28 U.S.C. § 157(d) as implemented by Fed. R. Bankr. P. 5011 and D. Kan. Rule 83.8.6(a)(6).[1] Plaintiff R&F Intellectual Property Acquisition, Inc ("RF") objects.[2] D. Kan. Rule 83.6.6(f) provides that upon filing a motion to withdraw the reference, the Bankruptcy Court will submit a written recommendation to the District Court as to whether the reference should be withdrawn. After careful review of the parties' submissions and hearing oral argument on February 14, 2007, the Court recommends to the District Court that Hantover's motion to withdraw the reference for cause be granted.

Factual Background

Hantover and RF's parent company, Bettcher Industries, Inc ("Bettcher") have been involved in significant legal controversies in various other courts for several years. With the filing of Dynamic Tooling Systems, Inc.'s bankruptcy case here, these two parties have found a further forum in which to air their differences. Debtor Dynamic Tooling Systems, Inc. ("DTS") was a small Wichita machine shop whose president, Dennis Ross, developed and patented a rotary cutting tool for deboning animal carcasses used in the meat packing industry. The tool has parts interchangeable with those sold by Bettcher, the acknowledged market leader in this somewhat narrow field. In June of 2003, Hantover entered into a Distributorship Agreement ("Agreement") with DTS under which Hantover would be DTS's exclusive distributor for a period of ten years commencing June 1, 2003, in return for which DTS granted Hantover a perpetual license to use DTS's intellectual property

[1] Dkt. 11, 19.

[2] Dkt. 13.

(including its rotary tool design). Under the terms of the Agreement, when it terminated, Hantover would retain DTS's perpetual license so that Hantover could continue to manufacture and sell these knife components and, necessarily compete with Bettcher. DTS fell on hard times and, in 2004, filed a chapter 11 petition in this Court. Beginning in 2006, Bettcher acquired both secured and unsecured claims in DTS's bankruptcy case until it held DTS's bank's secured claim and nearly all of the unsecured claims.[3] Bettcher therefore became the dominant creditor in the case, adopting a very aggressive posture.

In 2006, both DTS and Bettcher proposed plans of reorganization in the bankruptcy case. On the eve of the confirmation hearing, Bettcher and the debtor arrived at a settlement by which DTS withdrew its plan and its objections to Bettcher's plan. This Court confirmed Bettcher's plan over Hantover's objections[4] and Hantover appealed the confirmation order to the Tenth Circuit Bankruptcy Appellate Panel. That appeal remains pending, but, in this Court's view, the pendency of that appeal does not deprive this Court of jurisdiction over the present adversary proceeding or of making a recommendation to the District Court concerning the disposition of the instant motion.

Under Bettcher's plan as confirmed, Bettcher funded RF, a subsidiary, which will in turn pay the unsecured creditors in full, up to $750,000 in the aggregate, and reject the Agreement under § 365(a).[5] RF rejected the Agreement in open court at the August 22, 2006 confirmation hearing and,

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[3] Bettcher apparently took this route after DTS spurned Bettcher's efforts to acquire DTS.

[4] Case no. 04-15900, Dkt. 259, 274.

[5] The Bettcher plan treats the Agreement as an executory contract under 11 U.S.C. § 365.

thereafter, Hantover filed a claim for rejection damages in excess of $2.9 million.[6] Hantover claims that it has sustained or will sustain damages allegedly due to the prepetition breach of the Agreement. The enumerated damages appear to be the result of (1) anticipated loss of sales of the DTS products; (2) expense incurred by Hantover in drawings, tooling, and equipment to manufacture the DTS product; and, curiously, (3) loss of reputation.

On October 24, 2006, RF filed the ten-count adversary complaint that is the subject matter of this motion. By its complaint, RF objects to Hantover's claim.[7] In grand theory, RF asserts that Hantover took advantage of its superior market position in the rotary knife industry to cause DTS to enter into the Agreement, an Agreement that RF alleges should be declared void *ab initio*. That, in turn, allowed Hantover to predominate DTS's business by influencing or forcing Dennis Ross to manage DTS to Hantover's advantage and to the detriment of DTS's creditors (not to mention Bettcher, its principal competitor). This Court attaches a copy of the complaint to this recommendation for the District Court's convenience. Highly summarized, RF's complaint alleges the following causes of action:

1. The Agreement was entered into for an illegal purpose (the domination of DTS) and is therefore void.

2. The Agreement is void for lack of consideration.

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[6] When an executory contract is rejected, the non-debtor party may assert a claim for damages arising from the rejection, treating that action as a breach that occurred immediately before the bankruptcy case was filed. 11 U.S.C. § 365(g). To the extent the Agreement involves the licensing of intellectual property, the non-debtor licensee may treat the contract as terminated immediately prepetition or may opt to retain its license rights for the duration of the contract. *See* 11 U.S.C. § 365(n). Hantover has filed a claim. *See* Claim No. 16 filed September 21, 2006.

[7] *See* Fed. R. Bankr. P. 3007.

3. The assignment of the perpetual license is a fraudulent transfer of DTS's intellectual property based on actual fraud and is avoidable under the Kansas Uniform Fraudulent Transfer Act ("KUFTA").[8]

4. The perpetual license transfer is an avoidable fraudulent transfer based on constructive fraud under the KUFTA.[9]

5. Hantover aided and abetted Dennis Ross' breach of his fiduciary duty to DTS and its creditors.

6. The Agreement essentially reduced DTS to being an instrumentality or alter ego of Hantover.

7. Hantover contributed to the deepening insolvency of DTS.

8. Because of Hantover's numerous misdeeds, its claim should be equitably subordinated to those of the other creditors.

9. Hantover's claims (including an administrative expense claim) should be disallowed because they are unenforceable under applicable law as provided by 11 U.S.C. § 502(b)(1).

10. DTS's transfer of $2,703 to Hantover is an avoidable preference under 11 U.S.C. § 547(b).

For counts five, six, and seven, RF seeks compensatory damages in excess of $750,000 and punitive damages of $1.5 million.

In Hantover's answer timely filed December 4, 2006, it demanded a jury trial on each

[8] KAN. STAT. ANN. § 33-204(a)(1) (2000).

[9] KAN. STAT. ANN. § 33-204(a)(2) (2000).

eligible cause of action and requested that the reference be withdrawn.[10] Upon being directed to file its Motion for Withdrawal of the reference in a separate pleading, Hantover did so on December 21, 2006.[11]

Analysis

A. Procedural Posture

This adversary proceeding was filed on October 25, 2006. Hantover first requested withdrawal of the reference on December 4, 2006.[12] On January 11, 2007, pursuant to this Court's order and standing procedure under Fed. R. Bankr. P. 7026 and Fed. R. Civ. P. 26, the parties filed their Report of Parties Planning Meeting under Rule 26(f). This Court adopted that Report by order dated January 23, 2007, setting deadlines for discovery of June 29, 2007, final pre-trial order of September 14, 2007, and dispositive motions by August 31, 2007. Based on the parties' conduct

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[10] In doing so, Hantover was protecting its right to a jury trial and following *Stainer v. Latimer (In re Latimer),* 918 F. 2d 136, 137 (10th Cir. 1990) which holds that to avoid waiver of the right to jury trial, a party must combine the request for jury trial with a request for transfer to the district court.

[11] Dkt. 8 and 11.

[12] D. Kan. R. 83.8.6(c) provides for a withdrawal motion to be filed within 20 days of service of the summons or entry of appearance. Fed. R. Bankr. P. 7012(a) provides for an answer to the adversary complaint to be filed within 30 days of issuance of the summons. Technically, Hantover's motion is untimely under Rule 83.8.6(c) because it was originally embedded in Hantover's timely answer and timely jury trial demand, which were filed December 4, 2006, more than 20 days after service. As RF has not raised the timeliness of the motion as an objection, and because Hantover has timely exercised its right to a jury trial, Fed. R. Civ. P. 38(b), and complied with the Tenth Circuit's mandate in *Latimer*, *supra* at footnote 10, I recommend that it be considered on its merits. In any event, the District Court may withdraw the reference on its own motion and waive the timeliness of the motion under its local rule. *See* 11 U.S.C. § 157(d). More importantly, Hantover has demanded a jury trial that, under the language of 28 U.S.C. § 157(e) and *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.),* 911 F.2d 380 (10th Cir. 1990) this Court cannot conduct, further recommending the District Court to consider the merits of this matter.

during the bankruptcy case, there is little reason to believe that this matter can be successfully mediated.

B. Legal Standards

28 U.S.C. §157(d) governs both a permissive and mandatory withdrawal of the reference to bankruptcy court and provides:

> The district court *may* withdraw, *in whole or in part*, any case or proceeding referred under this section, on its own motion *or on timely motion* of any party, *for cause shown*. The district court *shall*, on timely motion of a party, so *withdraw a proceeding* if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce. [Emphasis added.].

Hantover seeks withdrawal of the reference for cause.[13] The stated grounds for cause are: (1) RF's state law and common law claims are not "core" and predominate the adversary proceeding; and (2) Hantover is entitled to a jury trial on many of RF's claims.[14]

The statute further addresses instances where the right to a jury trial is implicated in the referred proceedings:

> If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court *and with the express consent of all the parties.*

28 U.S.C. §157(e) (Emphasis supplied.).[15] Hantover has implicitly denied that consent.

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[13] The statute does not define what constitutes "cause" for permissive withdrawal of the reference.

[14] D. Kan. Rule 83.8.6(a)(6).

[15] *See* U.S. CONST. amend. VII; *See also* 28 U.S.C. §1411(a).

The United States District Court for the District of Kansas has by order referred bankruptcy cases and proceedings to the bankruptcy judges in the District of Kansas, including core proceedings arising under title 11 of the United States Code.[16] Core proceedings are defined, in part, in 28 U.S.C. § 157(b)(2). This Court has a duty to determine whether the adversary proceeding is a core proceeding.[17]

In determining whether to withdraw the reference for cause, courts typically consider (1) whether the claims asserted are core or non-core proceedings under 28 U.S.C. § 157(b) and are legal or equitable in nature; (2) whether withdrawal of the reference will further or diminish the goal of uniform administration of bankruptcy cases; and (3) whether the matters implicated by the proceeding are more typically tried in District Court.[18]

1. Core vs. Non-core

Whether a proceeding is core or non-core is important to determine the extent of the bankruptcy court's jurisdiction. The bankruptcy court may hear, determine and enter judgment in core proceedings while it may only make proposed findings of fact and conclusions of law to the District Court in non-core proceedings, absent the consent of the parties.[19] Congress enacted an inclusive list of core proceedings in 28 U.S.C. § 157(b). Certain of the causes of action pled by RF fall within the listings contained in the statute. Certainly the claims relating to disallowance of

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[16] 28 U.S.C. §157(a) and (b); D. Kan. Rule 83.8.5.

[17] As the statute makes clear, the fact that the adversary proceeding may involve application of state law does not, in and of itself, compel a determination that the proceeding is non-core. *See* 28 U.S.C. §157(b)(3).

[18] *See* William L. Norton, Jr., Norton Bankruptcy Law and Practice 2d § 8:1 (West 2004).

[19] 28 U.S.C. §157(b)(1) and (c).

Hantover's claim, the subordination of Hantover's claims, and the avoiding of an alleged preferential transfer under 11 U.S.C. § 547(b) (counts eight, nine and ten) are core.[20] The issues concerning the validity and enforceability of the Agreement (counts one through four) may be core because they are, or are similar to, proceedings to determine or avoid fraudulent conveyances, seek determinations that the Agreement is void and disallowance of Hantover's claim based thereon, and are tantamount to counterclaims against Hantover's claim.[21] The balance of the claims (counts five, six and seven) could conceivably be deemed "other proceedings" under the catch-all provision of § 157(b)(2)(O) or concern "administration" of the estate under § 157(b)(2)(A). They could just as readily be considered claims that do not depend on bankruptcy laws for their existence and could be brought in another forum.[22] But even assuming each of the causes of action in RF's complaint are core proceedings, the real factor in determining whether to withdraw the reference is whether Hantover is entitled to a trial by jury on the claims and, if so, whether it waived its jury trial right by filing its proof of claim in the bankruptcy case.

2. Legal vs. Equitable

Whether Hantover is entitled to jury trial on its claims is predicated upon the legal or equitable nature of similar claims at the time the Seventh Amendment was ratified. If the various causes of action pled by RF would have been legal claims at ratification, absent a valid waiver of

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[20] See 28 U.S.C. § 157(b)(2)(B) (allowance of claims) and §157(b)(2)(F) (determination of preferences).

[21] 28 U.S.C. § 157(b)(2)(H) (determine fraudulent conveyances); § 157(b)(2)(B) (allowance of claims); and § 157(b)(2)(C) (counterclaims of estate against a claim). *See In re Wencl*, 71 B.R. 879 (Bankr. D. Minn. 1987) (claim under Minnesota version of UFTA is core).

[22] *See In re Gardner*, 913 F.2d 1515, 1518 (10th Cir. 1990) (Core proceedings are those that have no existence outside of bankruptcy.).

Hantover's jury trial rights, Hantover will have made a strong case for withdrawal of the reference. The bankruptcy courts' jury trial powers are strictly proscribed by statute and rule. 28 U.S.C. § 157(e) provides that a bankruptcy judge may conduct a jury trial if the district court specially designates it to do so and "with the express consent" of all the parties.[23] Here, Hantover has withheld that consent.

The Court believes that counts five, six and seven are clearly legal claims, representing what may be characterized as tort actions for money damages, all of which would have been legal claims predicated on case law or statutes at the time of ratification and, accordingly, triable to a jury.[24] Counts three and four seek to avoid alleged fraudulent transfers under state statute and are equitable claims in this situation.[25] Counts one and two seek declaratory relief that the Agreement upon which

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[23] *See also, In re Kaiser Steel Corp., supra* at footnote 12.

[24] *See Carnes v. Meadowbrook Exec. Bldg. Corp.*, 17 Kan. App. 2d 292, 836 P.2d 212 (1992) (breach of fiduciary duty is a legal claim); *Official Committee of Unsecured Creditors v. R.F. Lafferty & Co., Inc.*, 267 F.3d 340 (3rd Cir. 2001) (deepening insolvency is a legal claim). While there is a fair amount of authority that RF's alter ego theory is a creature of equity, RF seeks damages – a legal remedy. This probably makes the claim a legal one or at a minimum, may require the court to decide whether the alter ego doctrine applies and a jury to decide the question of damages. *See International Financial Services Corp. v. Chromas Technologies Canada, Inc.*, 356 F.3d 731 (7th Cir. 2004); *Rebein v. Kost (In re III, Inc.)*, Adv. No. 05-6077, 2006 Bankr. LEXIS 299, * 34 -*39 (Bankr. D. Kan. Mar. 3, 2006)

[25] In *Granfinanciera, S.A. v. Nordberg, infra* the Supreme Court held that a fraudulent transfer claim seeking return of a determinate sum of money was legal in nature to which a right of jury trial attached. But where, as here, the fraudulent transfer claim is in the nature of avoidance of property transfers (transfer of perpetual license to use intellectual property), and does not seek return of a definite sum of money, the claim is an equitable one for which no right to jury trial exists. *See Senchal v. Carroll*, 394 F.2d 797 (10th Cir. 1968), *cert. denied* 393 U.S. 979 (1968); *In re Mozer*, 10 B.R. 1002 (Bankr. Colo. 1981); *In re Pilavis*, 228 B.R. 808 (Bankr. D. Mass. 1999) (distinguishing *Granfinanciera*, bankruptcy court held that trustee's requested remedy to avoid or set aside fraudulent transfer was equitable claim and no right to jury trial attached.); *In re Wencl*, 71 B.R. 879 (Bankr. D. Minn. 1987) (where claim under state's UFTA sought avoidance or reversal of fraudulent transfers, the claim was equitable in nature).

Hantover's claim is based is void and unenforceable. These counts will be determined by nonbankruptcy law. Declaratory relief may be legal or equitable depending on the basic nature of the underlying issues.[26] I conclude that counts one and two are more likely equitable claims when no request for damages is made.[27] Count eight, seeking the equitable subordination of Hantover's claim, while predicated on § 510 of the Bankruptcy Code, is clearly an equitable proceeding that would not have been subject to trial by jury in the Eighteenth Century. Count nine relates to the allowance of Hantover's claim under § 502 but seeks no monetary relief. It effectively asserts that Hantover's claim is unenforceable "under any agreement or applicable law" and is probably an equitable claim.[28] Count ten seeks recovery of a preference under 11 U.S.C. § 547(b).[29] Unlike the fraudulent transfer claims in count three and four, RF seeks return of a definite sum of money and for that reason, the preference claim is probably a legal claim.[30]

In short, four of the ten counts (counts five, six, seven and ten) are legal claims triable to a

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[26] *Manning v. United States*, 146 F.3d 808 (10th Cir. 1998) (plaintiff not entitled to jury trial on claim for declaratory judgment under Declaratory Judgment Act where he did not request monetary damages).

[27] *See Big Dog Motorcycles, L.L.C. v. Big Dog Holdings, Inc.*, 400 F. Supp. 2d 1273 (D. Kan. 2005) (No right to jury trial existed in plaintiff's trademark infringement action where only declaratory judgment that its conduct did not infringe upon, or unfairly compete with, defendant's trademarks, was sought); *Mile High Industries v. Cohen*, 222 F.3d 845 (10th Cir. 2000) (declaratory judgment pertaining to promissory note and mortgage executed in conjunction with agreements for sale and lease back of a shopping center were equitable in nature).

[28] *See* 11 U.S.C. § 502(b)(1).

[29] It is unclear whether the preference claim relates in any fashion to the Agreement that is at issue in most of RF's claims.

[30] *See Schoenthal v. Irving Trust Co.*, 287 U.S. 92, 53 S. Ct. 50, 77 L.Ed. 185 (1932) (preference action seeking only monetary relief is an action at law and to which a right to jury trial exists).

jury and a timely demand has been made. It further appears that some facts and circumstances that supply the underlying basis for counts five through seven, which are clearly legal in nature, may also relate to the basis for counts one through four, eight and nine.

3. Waiver of Right to Jury Trial on Legal Claims (Counts 5, 6, 7 and 10).

But, as noted above, Hantover filed a proof of claim in the DTS bankruptcy case, implicating the question of whether it has waived its right to a jury trial on its legal claims. By filing a proof of claim, Hantover has subjected itself to the court's jurisdiction, but not necessarily for every purpose. Hantover's claim nominally arises out of the Agreement and seeks recompense for lost revenues, the costs of retooling, the cost of equipment designed to manufacture the Trimmit product licensed to it by DTS, lost parts and service sales, and "loss of reputation and marketing expense." All of these claims arguably arise from the rejection of the Agreement by RF and are the proper subject of a claim in the bankruptcy case.

What must be determined here, however, is whether the claims asserted by Hantover in its proof of claim are so closely related to the subject matter of the claims raised by RF in its complaint that Hantover has waived its jury trial rights. In *Katchen v. Landy*, the United States Supreme Court held that when a creditor presented a claim premised upon an action at law to the bankruptcy court, the creditor subjected itself to bankruptcy jurisdiction and the claim was converted to an equitable proceeding.[31] In essence, the creditor had sought not a judgment at law, but a pro rata share of the bankruptcy estate. In two cases considering this issue under the 1978 Bankruptcy Code, the Supreme Court has made clear that the contours of the waiver that occurs when proof of claim is made are not unlimited. First, in *Granfinanciera, S.A. v. Nordberg*, the Supreme Court concluded

[31] 382 U.S. 323, 326-336, 86 S. Ct. 467, 15 L. Ed. 2d 391 (1966).

that defendants in fraudulent transfer actions were entitled to a jury trial, but left the caveat that the defendants in that particular case had not filed proofs of claim.[32] Shortly thereafter, the Supreme Court held in *Langenkamp v. Culp* that a creditor that filed a claim in a bankruptcy case had no right to a jury trial on the bankruptcy trustee's preference claim filed in response to the creditor's claim.[33]

This waiver is not unlimited in scope and only extends to matters integrally tied up in the allowance or disallowance of the claim. The Tenth Circuit suggested as much in *In re Katchen's Bonus Corner, Inc.*, where it held that when a creditor filed a claim and impliedly consented to the bankruptcy court's jurisdiction, that consent did not extend to claims not involving a setoff, preference, or fraudulent transfer and which are wholly unrelated to the creditor's claim.[34] The Tenth Circuit's rule in *Katchen* remains good law today and, indeed, is the Circuit's last pronouncement on this point. Another Circuit to have considered this point is the Second Circuit in *Germain v. Connecticut National Bank*.[35] There the court suggested that both *Granfinanciera* and *Langenkamp* refer to the claims allowance process, requiring courts to look directly at § 502(d) which provides for an entity's claim to be disallowed where property could be recovered from the entity under §§ 542, 543, 550, or 553 or if the entity is a the transferee of an avoidable transfer under §§ 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) unless the entity has turned over the property or repaid the transfer. Under the Second Circuit approach, filing a proof of claim does not waive

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[32] 492 U.S. 33, 109 S. Ct. 2782, 106 L. Ed. 2d 26 (1989).

[33] 498 U.S. 42, 111 S. Ct. 330, 112 L. Ed. 2d 343 (1990), *reh'g denied* 498 U.S. 1043 (1991).

[34] *Katchen v. Landy (In re Katchen's Bonus Corner, Inc.)*, 336 F.2d 535, 536-37 (10th Cir. 1964), *aff'd on other grounds, Katchen v. Landy*, 382 U.S. 323 (1966).

[35] 988 F.2d 1323 (2d Cir. 1993).

the claimant's jury trial rights with respect to actions that might augment the estate but have no impact on the entity's claims.[36]

Hantover's filed claim arises out of the terms and the existence of the Agreement. Not all of RF's claims are entirely tied up in the Agreement or impact Hantover's claim. Certainly, counts one and two, seeking declarations that the Agreement is void make up the basis of defenses to Hantover's claim under § 502(b)(1). Counts three and four seeking to avoid fraudulent transfer of the perpetual license under the Agreement clearly fall within the ambit of counterclaims to filed claims as those actions lie against Hantover under § 544 and form the basis for disallowing Hantover's claims under § 502(d). Counts one through four are in any event equitable claims and not triable to a jury. RF's legal claims – counts five, six, and seven, asserting the tort-based claims of aiding and abetting a breach of fiduciary duty, alter ego, and deepening insolvency, do not appear to be bars to the enforceability of the Agreement and allowance of Hantover's claim under § 502(d). I therefore conclude that Hantover did not waive its jury trial right for those causes of action by filing a proof of claim. Counts eight and nine seeking equitable subordination of Hantover's claim and asserting objections to the allowance of Hantover's claim, are claims that would either bar allowance of Hantover's claim under § 502(d) or are creatures of equity as to which there is no jury trial right in the first place. Count ten, seeking to recover a preference is a legal claim but the Court is unable to determine whether this preference claim is intertwined with Hantover's rejection damages or impacts it any fashion since RF has not linked the preferential payment to the Agreement. It is one of the types of claims enumerated in § 502(d) that may bar allowance of Hantover's claim.

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[36] *Id.* at 1327.

Based upon the adversary complaint before it, the Court concludes that Hantover has not waived its jury trial right as to RF's legal claims and tort counts – counts five, six and seven – by filing its proof of claim. Hantover did not have jury trial rights in RF's equitable claims – counts one through four, eight and nine. The Court is unable to reach a reasoned conclusion as to count ten based upon the limited allegations before the Court to determine whether Hantover waived its jury trial rights with respect to this legal claim.

C. Judicial Economy

Many of the RF counts are, as noted above, core proceedings. Several of the RF counts are equitable claims to which Hantover has no right to a jury trial. Nevertheless, Hantover has not waived its jury trial rights as to counts five, six and seven and, absent consent by Hantover to these matters being tried by a bankruptcy judge, Hantover is entitled to a jury trial in the District Court on these tort claims. Judicial economy dictates that the core counts be tried by the same court and at the same time the other counts are tried. The District Court may order the trial such that the issues in the non-jury triable core and equitable proceedings not be presented to the jury. It appears that much of the evidence to be presented in support of or in opposition to RF's complaint relates to all of the counts. There would be little purpose in requiring the parties to present this evidence twice, once to the bankruptcy judge on the core, equitable counts and again to the District Court on the jury triable counts. Moreover, while this Court has lengthy experience in this case, that experience has been largely administrative in nature, dealing with scheduling, discovery disputes, and conducting substantive, but non-evidentiary hearings. This Court cannot candidly say that it has a wealth of knowledge of the facts underlying RF's claims.

Conclusion

I therefore recommend that Hantover's motion to withdraw the reference for cause be GRANTED and that the District Court try all of the matters raised in RF's complaint. That said, the District Court may wish to allow this Court to retain the reference for all pre-trial matters of administration as well as to make recommendations concerning dispositive motions.[37] This Court stands ready to perform such duties as the District Court deems fit.

# # #

[37] The Court notes that Hantover has since filed a motion to dismiss RF's adversary complaint pursuant to Fed. R. Civ. P. 12(b)(6). *See* Dkt. 25.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In Re **DYNAMIC TOOLING SYSTEMS, INC.,** **Debtor.** **R & F INTELLECTUAL PROPERTY ACQUISITION, INC.,** **6801 State Route 60** **Birmingham, OH 44816** **Plaintiff,** **v.** **HANTOVER, INC.,** **c/o Bernard G. Huff, Registered Agent** **10301 Hickman Mills Dr., Ste 200** **Kansas City, MO 64137,** **Defendant.**	§ §	**Chapter 11 Case No. 04-15900** **Judge Robert E. Nugent** **Adv. No. _____** **COMPLAINT**

Plaintiff, R & F Intellectual Property Acquisition, Inc., by its attorneys, and in its capacity of Distribution Agent and estate representative for the estate of Debtor and debtor in possession Dynamic Tooling Systems, Inc., hereby files this Complaint against Defendant, Hantover, Inc., and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff R & F Intellectual Property Acquisition, Inc. ("Plaintiff" or "R & F") is a for-profit corporation duly formed under Delaware law. R & F is a wholly-owned subsidiary of Bettcher Industries, Inc., a creditor and party-in-interest in the above captioned Chapter 11 proceeding.

2. Defendant Hantover, Inc. ("Hantover" or "Defendant") is a for-profit corporation duly formed under Missouri law, with its principal place of business in Kansas City, Missouri.

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157, 1331, and 1334 because this is a civil action arising under Title 11 of the United States Code (the "Bankruptcy Code") or arising in or related to the Debtor's estate. This is a core proceeding within the meaning of 28 U.S.C. § 157.

4. Venue of this action is proper in this district pursuant to 28 U.S.C. § 1408 and 1409(a) because this proceeding arises under the Bankruptcy Code or arises in or is related to the Debtor's above-captioned case, now pending in this Court.

5. Plaintiff has standing to bring this action as Distribution Agent for and as a representative of the Debtor's estate, pursuant to Article V of Bettcher Industries, Inc.'s confirmed Plan of Reorganization Dated October 16, 2006 (the "Plan").

FACTUAL ALLEGATIONS

6. The Debtor commenced this case on October 25, 2004 (the "Petition Date") by filing a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

7. On October 2, 2006, the Court entered an Order Confirming Bettcher's Plan of Reorganization Dated July 10, 2006 (the "Confirmation Order"). On October 16, 2006, Bettcher

filed a Motion for (I) an Order Modifying Effective Date of Bettcher's Plan of Reorganization Dated July 10, 2006; or, Alternatively, (II) appointment of A Chapter 11 Trustee Pursuant to 11 USC 1104(a).

8. The Court thereafter modified the Effective Date of Bettcher's Plan of Reorganization Dated July 10, 2006 such that the Plan became effective from October 18, 2006.

9. Pursuant to Article V of the Plan, R & F is the assignee of all of the Debtor's causes of action and avoidance actions (whether under State law, federal law, or otherwise), and is now serving as Distribution Agent and estate representative pursuant to Article V of the Plan and 11 U.S.C. § 1123(b)(3).

10. Prior to the Petition Date, on or about June 4, 2003, Hantover entered into a certain Exclusive Distributorship Agreement with the Debtor (the "Distributorship Agreement"), pursuant to which Hantover agreed to serve as the sole and exclusive distributor of certain of the Debtor's products (the "Products"), including the Debtor's "DTS Trimmer" (an industrial trimmer used in the meat processing industry) and replacement parts. The Products constituted approximately 90% of the Debtor's sales during the period of time that the Distributorship Agreement was in effect. A true and correct copy of the Distributorship Agreement is attached to this Complaint as Exhibit A.

11. Leading up the parties' execution of the Distributorship Agreement, the Debtor had, for several years, experienced dwindling sales and was unprofitable. Dale Ross ("Ross"), the Debtor's sole principal and an officer and/or director of the Debtor, was an unsophisticated machinist with little or no business acumen and had been running the Debtor's business at a loss since 2000, with almost no profit prior to that time and extending back to the Debtor's incorporation in 1998.

12. Hantover, on the other hand, had been in business since 1939 and billed itself as one of the world's foremost distributors of production supplies for the food industry.

13. Although experienced in operating his manufacturing machinery and equipment, Ross struggled with accounting and pricing issues, and looked to Hantover's experience to guide him in his company's time of dire need. Ross intended that Hantover's experience in the food industry, Hantover's exclusive distribution of the Debtor's Products, and the parties' general relationship under the Distributorship Agreement would turn his fledgling and failing company into a successful business venture.

14. Hantover, however, clearly did not have Ross's or the Debtor's interests in mind when it entered into the Distributorship Agreement with DTS. Hantover astutely observed that the Debtor's intellectual property and manufacturing expertise was an asset that constituted a substantial portion of the value of the Debtor's business. Taking advantage of Ross's naivety and lack of fundamental business skills, and seeing opportunity and profit in acquiring the right to manufacture the Debtor's Products and designs, Hantover crafted a scheme and secured an agreement that enabled it to obtain the rights to the Debtor's intellectual property at no cost and without obligating Hantover to the Debtor at all.

15. In furtherance of this scheme, Hantover coaxed a desperate and naive Ross into signing the Distributorship Agreement, pursuant to which the Debtor granted Hantover a non-exclusive license to virtually all of the Debtor's intellectual property and manufacturing rights. The Distributorship Agreement was extremely one-sided and egregious, as it preserved Hantover's right to stock, sell, and promote products that competed with the Debtor's products, but limited the Debtor to distributing its products solely through Hantover.

16. Hantover ensured that its aggressive and underhanded acquisition of licenses to the Debtor's intellectual property and manufacturing would be permanent. Pursuant to paragraph 8 of the Distributorship Agreement, to the extent that Hantover terminated the contract, upon termination Hantover would hold a manufacturing license for the Debtor's Products and the right "to use in perpetuity any and all [of DTS'] trademarks, trade names, service marks, and copywrited materials...that may be in existence" at the time of termination. The term of the Distributorship Agreement was at most ten years, but Hantover reserved the right to terminate the Distributorship Agreement, in its sole discretion, at anytime for any reason that it deemed appropriate.

17. Therefore, under the plain language of the Distributorship Agreement, upon termination Hantover would be free to hire a third party to manufacture the Debtor's Products and then use the Debtor's name, good will, and reputation to sell the Products.

18. Ross either did not understand the gravity of this arrangement or how much control of the Debtor he was giving away to Hantover and at what cost, or he otherwise breached his duty to the Debtor's other creditors. Although the terms of the Distributorship Agreement purport to make pricing a mutual decision of the parties, the broad termination provisions of the Distributorship Agreement expressly provide that Hantover was free to terminate in the event of "any dispute" over pricing. The Debtor, however, could only terminate the Distributorship Agreement in the event of a "material default" by Hantover. The term "material default", as defined in the Distributorship Agreement expressly excluded "any matter related to sales volume." Hantover could have thus theoretically terminated at any time for nearly any reason but the Debtor had no means to get out of the arrangement, even if its Products were never sold or marketed by Hantover.

19. In short, Hantover entered into the Distributorship Agreement in order to take advantage of Ross and the Debtor's business for purposes of developing product at the expense of DTS's creditors, and without any financial risk to Hantover. Hantover received all of the value of and the essence of the Debtor's business under the Distributorship Agreement with no corresponding benefit or consideration in favor of the Debtor, while transferring all risk and business loss to the Debtor and ultimately DTS' creditors.

20. Hantover set up the Debtor for failure from the inception of the Distributorship Agreement. Following the parties' execution of the Distributorship Agreement, the Debtor's losses continued to mount and became more severe. By using its pricing and other controls, and heavy-handed termination rights under the Distributorship Agreement, Hantover repeatedly took advantage of the Debtor by forcing the establishment of prices for the Products far below the Debtor's cost of production.

21. As planned, Hantover intentionally reaped profit from the production and sale of the Debtor's Products while shielding itself from true production costs and forcing DTS' inevitable bankruptcy. When the Debtor's losses became so severe that it could not continue operations without bankruptcy relief, Ross alerted Hantover of DTS' financial crises and impending failure.

22. In response to Ross' pleas for financial assistance, Hantover provided Ross with just enough financing to keep production of the Products moving and Hantover's sales flowing, but not nearly enough to sustain the costs of the Debtor's production or to make the Debtor's creditors whole. Hantover ultimately steered Ross's decision-making and compelled the filing of the captioned Chapter 11 case so that its pillage of the Debtor's resources could continue, all at the expense of the Debtor's estate and creditors.

23. Hantover's greed and surreptitious activity continued throughout the proceeding. Without any Court authority or approval, Hantover brazenly made secret cash advances to the Debtor during the pendency of the case to keep the Debtor propped up and operating, all in an effort to further its production and profit from the distribution of the Debtor's Products at the expense of the Debtor and the Debtor's unsecured creditors.

24. On August 11, 2006, in an apparent admission against its own interests, Hantover filed a Motion for Allowance of an Administrative expense claim in the amount of $18,756.20, and allowance of a general unsecured claim in the amount of $4,750.00. These claims allegedly arise on account of certain prepetition and postpetition advances Hantover made to the Debtor in connection with its continued attempts to use the Debtor's resources for its own gain and advantage.

25. Pursuant to the Confirmation Order, the Distributorship Agreement was ultimately rejected as of the Effective Date of the Plan. Despite Bettcher and R & F's involvement in this case, Hantover has continued its scheme to use the Debtor's intellectual property and manufacture the Debtor's Products for its own benefit. Notwithstanding the rejection of the Distributorship Agreement, Hantover has asserted that it continues to hold a license to use substantially all of the Debtor's intellectual property.

26. On September 21, 2006, Hantover filed a Proof of Claim against the Debtor's estate (proof of claim No. 16) on account of its rejection damages under the Distributorship Agreement, in the amount of $2,910,000.00. Hantover's rejection damages claim is unsupported and inappropriate given the execution of Hantover's fraudulent scheme, the voidability of the Distributorship Agreement, and the lack of any real evidence that Hantover has been damaged at all.

27. Additionally, within ninety (90) days prior to the Petition Date, the Debtor transferred additional property to Hantover with a total value of $2,703.05, which is subject to recovery as a preferential transfer.

SUMMARY OF ACTION

28. This action seeks entry of an order declaring the Distributorship Agreement void *ab initio* on account of the fact that it was entered into for an illegal purpose and to further Hantover's fraudulent scheme, and for lack of consideration on the part of Hantover. In addition, this action seeks to recover damages arising out of Hantover's excessive control over the Debtor and its operations by virtue of the leverage it obtained pursuant to the Distributorship Agreement, and further seeks to hold Hantover accountable for deepening the Debtor's insolvency and aiding and abetting Ross' breach of fiduciary duties to the Debtor and its creditors. In addition, this action seeks to recover from Hantover the intellectual property and manufacturing license rights that were fraudulently transferred by the Debtor to Hantover pursuant to the Distributorship Agreement, and seeks recovery of damages associated therewith.

29. Furthermore, the action seeks to disallow or equitably subordinate Hantover's $2,910,000.00 claim for rejection damages and all other claims it holds in this case by virtue of its status as a fraudulent transferee and on account of its intentional scheme to exercise undue control over the Debtor and waste the Debtor's resources for its own financial gain.[1]

30. Finally, the action seeks to recover a certain preferential transfer made by the Debtor to Hantover in the amount of $2,703.05 pursuant to Section 547 of the Bankruptcy Code.

[1] The arguments set forth in any and all of Bettcher's and/or Plaintiff's filed objections to any and all of Hantover's claims asserted in the captioned Bankruptcy Case are expressly incorporated as if fully rewritten herein.

COUNT I

(Distributorship Agreement is Void on Account of Illegal Purpose)

31. Plaintiff repeats the allegations set forth above as if fully set forth herein.

32. The Distributorship Agreement was entered into for an illegal purpose and to further an illegal scheme by Hantover to defraud the Debtor and the Debtor's creditors.

33. The Distributorship Agreement was not fairly entered into by the parties, the consideration provided to Hantover by the Debtor under the Distributorship Agreement was illegal by virtue of it being a fraudulent transfer, and as such the Distributorship Agreement is void *ab initio*.

34. By reason of the foregoing, Plaintiff is entitled to a judgment in its favor finding the Distributorship Agreement void *ab initio* and denying all claims of Hantover based upon or related to the Distributorship Agreement.

COUNT II

(Distributorship Agreement is Void for Lack of Consideration)

35. Plaintiff repeats the allegations set forth above as if fully set forth herein.

36. There was no benefit, profit or advantage provided to the Debtor by Hantover under the Distributorship Agreement.

37. As such, Hantover provided no consideration to the Debtor pursuant to the terms of the Distributorship Agreement, or otherwise.

38. By reason of the foregoing, the Distributorship Agreement is unenforceable at law and Plaintiff is entitled to a judgment in its favor finding the Distributorship Agreement void *ab initio*, and denying all claims of Hantover based upon or related to the Distributorship Agreement.

COUNT III

(Fraudulent Transfer Based Upon Actual Fraud)

39. Plaintiff repeats the allegations set forth above as if fully set forth herein.

40. Pursuant to the Distributorship Agreement, and at Hantover's direction, the Debtor transferred (the "Transfer") significant assets to Hantover, including, without limitation, a perpetual and irrevocable license to manufacture the Products and a license of substantially all of the Debtor's patents, copyrights, trademarks and such other intellectual property necessary and attendant to the manufacture of the "DTS Trimmer," together with replacement parts and other items related thereto.

41. At Hantover's direction, the Debtor made the Transfer with the intent to hinder, delay, and defraud the unsecured creditors of the Debtor.

42. The Transfer constituted the substantial value and essence of the Debtor's business and was therefore the functional equivalent of substantially all of the Debtor's assets.

43. The value of the consideration received by the Debtor, if any, was not reasonably equivalent to the value of the asset transferred.

44. The Debtor was insolvent prior to and at the time of the Transfer, and became further insolvent as a result of and following the Transfer.

45. By virtue of the foregoing, pursuant to 11 U.S.C. §§ 544(b), 550, 551 and the Uniform Fraudulent Transfer Act, as adopted and codified under Kansas law at K.S.A. §§ 33-201, et seq., the Transfer should be avoided, recovered, and preserved for the benefit of the Debtor's estate.

COUNT IV

(Fraudulent Transfer Based upon Constructive Fraud)

46. Plaintiff repeats the allegations set forth above as if fully set forth herein.

47. The Debtor made the Transfer and incurred obligations under the Distributorship Agreement without receiving any value, or alternatively, less than reasonably equivalent value in exchange for the Transfer or said obligations of the Debtor and the Debtor was insolvent at the time of the Transfer and obligations incurred.

48. Before, at and after the time of the Transfer there were actual creditors of the Debtor holding unsecured claims against the Debtor.

49. By virtue of the foregoing, pursuant to 11 U.S.C. §§ 544(b), 500, 551 and Uniform Fraudulent Transfer Act, as adopted and codified under Kansas law at K.S.A. §§ 33-201, et seq., the Transfer to Hantover should be avoided, recovered, and preserved for the benefit of the Debtor's estate.

COUNT V

(Aiding and Abetting Breach of Fiduciary Duty)

50. Plaintiff repeats the allegations set forth above as if fully set forth herein.

51. Ross was the Debtor's sole principal and an officer and/or director of the Debtor prior to confirmation of the Plan. Accordingly, Ross owed a fiduciary duty to the Debtor to act at all times with the utmost good faith, loyalty, and care. In addition, because the Debtor was insolvent or in the zone of insolvency, Ross also owed fiduciary duties to the Debtor's creditors.

52. Ross breached his fiduciary duty by entering into the Distributorship Agreement on behalf of the Debtor and causing the Transfer to occur for little or no consideration, while intentionally or recklessly ignoring the Debtor's poor financial health and state of insolvency, to the detriment of the Debtor's unsecured creditors.

53. Hantover knowingly orchestrated and participated in the above-described breaches of fiduciary duty.

54. By aiding and abetting Ross's breaches of fiduciary duty, Hantover proximately caused harm to the Debtor and its unsecured creditors, and is thereby liable to Plaintiff for damages in excess of seven-hundred and fifty thousand dollars ($750,000.00).

COUNT VI

(Instrumentality/Alter Ego Liability)

55. Plaintiff repeats the allegations set forth above as if fully set forth herein.

56. By virtue of its leverage under the Distributorship Agreement, Hantover controlled the business decisions and actions of the Debtor such that the Debtor became the instrument or alter ego of Hantover.

57. Hantover misused the Debtor by treating it, and by using it, as a mere business conduit for the purposes of Hantover.

58. Because Hantover misused the Debtor's corporate form for its own purposes, the debts of the Debtor are in reality the obligations of Hantover.

59. Through its misuse of and exercise of control over the Debtor, Hantover proximately caused harm to the Debtor and its unsecured creditors, and is thereby liable to Plaintiff for damages in amount to be determined at trial, at least in excess of seven-hundred and fifty thousand dollars ($750,000.00).

COUNT VII

(Deepening Insolvency)

60. Plaintiff repeats the allegations set forth above as if fully set forth herein.

61. Hantover used its leverage and controls under the Distributorship Agreement, and made cash advances to the Debtor, in order to keep the Debtor operating and induce the Debtor

to proceed with production of the Products at a loss for the benefit of Hantover, at a time when Hantover knew that: (i) the Debtor would be unable to service its debts and (ii) by incurring such debts, the same would render DTS further insolvent.

62. As a result of the leverage that Hantover had over the Debtor, the Debtor's business was wrongfully continued for several years after it was further pushed into insolvency by virtue of the operation of the Distributorship Agreement. During this period, the Debtor suffered large losses and became more deeply insolvent, damaging creditors and costing them substantial value.

63. The Debtor's creditors suffered injury from the fraudulently expanded life and increased insolvency of the Debtor. As a result, the creditors' claims were substatially increased.

64. By virtue of the foregoing, by way of its leverage and control, Hantover fraudulently continued and prolonged the Debtor's insolvency. Hantover thereby contributed to the deepening insolvency of the Debtor and is liable for damages in an amount to be determined at trial, at least in excess of seven-hundred and fifty thousand dollars ($750,000.00).

COUNT VIII

(Equitable Subordination of Hantover Claims)

65. Plaintiff repeats the allegations set forth above as if fully set forth herein.

66. Hantover acted inequitably by virtue of its exercise of control over the Debtor's business and operations for its own financial gain, and by virtue of its intentional receipt of the Transfer of the Debtor's intellectual property for little or no consideration to the detriment of the Debtor's creditors.

67. The inequitable conduct of Hantover resulted in injury to other creditors of the Debtor.

68. Equitable subordination of all of Hantover's claims in this proceeding is consistent with the provisions of the Bankruptcy Code.

69. By reason of the foregoing, pursuant to § 510(c) of the Bankruptcy Code, the Plaintiff is entitled to a judgment against Hantover subordinating Hantover's claims to the prior payment in full of the Debtor's other creditors.

COUNT IX

(Objection to Claims of Hantover Pursuant to 11 U.S.C. § 502)

70. Plaintiff repeats the allegations set forth above as if fully set forth herein.

71. Hantover filed Proof of Claim No. 16, in the amount of $2,910,000.00, as a general unsecured claim.

72. On August 11, 2006, Hantover filed a motion for allowance of an administrative expense claim in the amount of $18,756.20, and allowance of a general unsecured claim in the amount of $4,750.00.

73. For the reasons set forth above, Plaintiff objects to any and all proofs of claims and other claims that Hantover has filed or asserted against the Debtor.

74. Plaintiff respectfully requests that the Court disallow these claims in whole, relating to the claims alleged herein, pursuant to Section 502 of the Bankruptcy Code.

COUNT X

(Recovery of Preferential Transfer Pursuant to 11 U.S.C. § 547)

75. Within ninety (90) days prior to the Petition Date, the Debtor transferred additional property to Hantover with a total value of $2,703.05.

76. The aforementioned transfer of $2,703.05 was made to or for the benefit of Hantover, for or on account of antecedent debts owed by the Debtor before said transfer was made.

77. The aforementioned transfer of $2,703.05 was made while the Debtor was insolvent.

78. The aforementioned transfer of $2,703.05 enabled Hantover to receive more than it would receive if the Debtor's case had been a Chapter 7 case under the Bankruptcy Code, the aforementioned transfer of $2,703.05 had not been made and Hantover had received payment of such debts to the extent provided by the provisions of the Bankruptcy Code.

79. Plaintiff is entitled to avoid the aforementioned transfer of $2,703.05 pursuant to 11 U.S.C. § 547 and to recover same from Hantover for the benefit of the estate pursuant to 11 U.S.C. § 550 and 551.

WHEREFORE, Plaintiff demands judgment against Hantover, as follows:

i. Finding that the Distributorship Agreement is void *ab initio* and denying all claims of Hantover based upon or related to the Distributorship Agreement; and

ii. Pursuant to 11 U.S.C. §§ 544(b), 550, 551 and the Uniform Fraudulent Transfer Act, as adopted and codified under Kansas law at K.S.A. §§ 33-201, et seq., avoiding the Transfer to Hantover, and further ordering that the Transfer be recovered and preserved for the benefit of the Debtor's estate; and

iii. Awarding compensatory damages in favor of Plaintiff and against Hantover, in an amount to be determined at trial that is at least in excess of seven-hundred and fifty thousand dollars ($750,000.00), plus prejudgment and postjudgment interest; and

iv. By reason of Hantover's intentional and fraudulent actions, awarding Plaintiff punitive damages against Hantover in the amount of one million five hundred thousand dollars ($1,500,000.00); and

v. Awarding Plaintiff its attorney's fees and costs incurred in this action; and

vi. Pursuant to § 510(c) of the Bankruptcy Code, subordinating of all of Hantover's claims against the Debtor's estate to the prior payment in full of the Debtor's other creditors; and

vii. Pursuant to § 502 of the Bankruptcy Code, disallowing of all of Hantover's claims asserted against the Debtor in this bankruptcy proceeding; and

viii. Avoiding of the aforementioned transfer of $2,703.05 from the Debtor to Hantover pursuant to 11 U.S.C. § 547 and recovery of same from Hantover for the benefit of the estate pursuant to 11 U.S.C. § 550 and 551; and

ix. Awarding Plaintiff such other and further relief as the Court deems just and proper.

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Dated: October 24, 2006

Respectfully submitted,

/s/ W. Thomas Gilman

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EXHIBIT A

EXCLUSIVE DISTRIBUTORSHIP AGREEMENT

THIS AGREEMENT is made and entered into as of the 4 day of June, 2003, by and between Hantover, Inc., a Missouri corporation ("Hantover") and Dynamic Tooling Systems, Inc., a Kansas corporation ("Manufacturer").

RECITALS:

A. Manufacturer is engaged in the business of engineering, designing, and manufacturing trimmers used in the meat packing industry commonly called a "DTS Trimmer," together with replacement parts and such other items as may be designed, created, produced, inventoried or manufactured by Manufacturer at any time in the future (the "Products").

B. In connection with its business operations, Manufacturer owns or shall hereafter own all patents, copyrights, trademarks and such other intellectual property necessary and attendant to the manufacture of the Products (the "Intellectual Property").

C. Hantover is engaged in the business of selling equipment and supplies used in the meat packing industry.

D. The parties mutually desire to enter into an exclusive distributor relationship subject to the terms and conditions of this agreement.

COVENANTS:

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and legal adequacy of which is acknowledged, the parties agree and covenant as follows:

1. ***Appointment of Distributorship.*** Subject to the terms and conditions of this agreement, Manufacturer and Hantover agree to the appointment and designation of Hantover as the exclusive distributor of the Products. Further subject to the terms and conditions so this agreement, Hantover accepts the appointment and the responsibility for promoting and selling the Products.

2. ***Term of Agreement.*** The term of this agreement shall be for ten (10) consecutive years commencing upon June 1, 2003, unless earlier terminated as herein provided.

3. ***Exclusivity.*** Manufacturer agrees that Hantover shall be its sole and exclusive worldwide distributor of the Products, during the entire term hereof, without exception. Manufacturer does not reserve the right to sell directly to any customers or users of the Products. Manufacturer further agrees that, notwithstanding the exclusive nature of this relationship, Hantover may stock, sell and promote merchandise, equipment and other products that compete with or may tend to compete with the Products.

4. ***Relationship of the Parties.*** Hantover shall for all purposes be an independent contractor and not the agent, employee, partner of, joint venturer with, or franchisee of Manufacturer. Manufacturer has no authority to bind Hantover or to claim to do so, in any dealings with any other person or entity. Hantover shall have the sole right to determine and control the manner in which it promotes and sells the Products, subject to no control by Manufacturer except as specifically set forth in this agreement. Manufacturer shall provide to Hantover whatever assistance may be reasonably requested and necessary under the circumstances.

5. ***Terms of Sale and Pricing.*** At the inception of this agreement there is no established price schedule. Manufacturer's sales of the products to Hantover shall be on terms and at such prices as may be mutually agreed upon from time to time throughout the duration of this agreement.

6. ***Warranty.*** Manufacturer warrants, for a period of one (1) year from the date of delivery, that the Products will be free from defects in material and workmanship. Manufacturer's warranty shall be the only warranty Hantover agrees to provide to buyers and end users of the Products.

7. ***Grant of License to Hantover.*** Manufacturer hereby grants to Hantover a perpetual, irrevocable and nonexclusive license to manufacture the Products. Manufacturer represents and warrants that it has rights in all of the Intellectual Property and that the license hereby granted shall not infringe upon or otherwise violate any rights in the Intellectual Property whether currently existing or hereafter assigned. Hantover agrees to refrain from using the license granted hereby or from manufacturing the Products until this agreement expires or is terminated pursuant to the provisions of this agreement.

8. ***License for Use of Trademarks and Copyrighted Materials.*** In addition to the manufacturing license granted by this agreement, and in connection with the manufacture and sale of the Products, Manufacturer also grants to Hantover the right to use in perpetuity any and all trademarks, trade names, service marks and copyrighted materials (such as product manuals, diagrams, pictures or other artwork, etc.) that may be existence at the time of termination of this agreement. Hantover may elect to revise or edit any written materials.

9. ***Termination.*** Hantover reserves the right to terminate this agreement for any reason whatsoever relating to any change in ownership or management of Manufacturer or such other circumstances that in Hantover's sole discretion it deems appropriate, including but not limited to any dispute over pricing. Manufacturer may terminate this agreement only upon Hantover's material default. As used herein, "material default" shall not include any matter related to sales volume. In the event of termination, Manufacturer shall honor all pending sales orders.

10. ***Indemnity.*** Manufacturer shall indemnify, defend and hold harmless Hantover from all claims, demands, suits and liability whatsoever arising from or related to claims of personal injury or product liability from the use of the Products.

11. *Governing Law, Jurisdiction and Venue.* This agreement shall be governed by the laws of Missouri and no other jurisdiction. If a dispute arises out of or in connection with this agreement, the parties agree to bring suit in the Circuit Court of Jackson County, Missouri and agree that such venue shall be the exclusive venue for all actions. In the event of litigation, the prevailing party shall be entitled to recover reasonable attorney fees and all expenses and costs as part of the judgment entered in the action.

12. *Entire Agreement.* This agreement shall constitute the entire agreement between the parties and shall supercede and replace all prior agreements, written or oral.

13. *Binding Agreement.* This agreement shall be freely assignable by Hantover to any entity owned or controlled by Hantover or its shareholders, or in the event of a change of control or ownership, to any successor entity. Manufacturer may not assign this agreement in whole or part without the prior written consent of Hantover.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first set forth above.

DYNAMIC TOOLING SYSTEMS, INC.

By: Dale Ross, President

HANTOVER, INC.

By: Bernard G. Huff, President