

COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

The Farmers & Merchants State Bank,) Case No. 11CV000128
)
Plaintiff,) Judge Barber
)
-vs-) **EMERGENCY MOTION TO**
) **APPROVE SETTLEMENT OF**
Archbold Elevator Inc., et al.,) **ALLEGED SECURED CLAIM OF**
) **TRUPOINTE COOPERATIVE, INC.**
Defendants.)
) David J. Coyle (0038966)
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* * *

Plaintiff The Farmers & Merchants State Bank (“Farmers”), with the consent of the Receiver¹ and certain other creditors referenced below, moves the Court to approve the settlement of an alleged secured claim asserted by Trupointe Cooperative, Inc. (“Trupointe”) against certain Receivership Property. Specifically, to resolve the dispute, Farmers intends to pay the total sum of \$135,663.66 to Trupointe in full satisfaction of

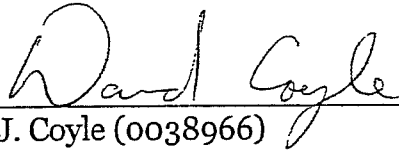
¹ All capitalized terms not herein defined shall have the same meaning as set forth in the Verified Complaint and Order Appointing Receiver.

any secured interest Trupointe may have or claim to have in the Collateral, which payment shall constitute an advance by Farmers for the benefit and protection of the Collateral under the terms of the Notes and various security agreements referenced in and attached to the Verified Complaint (the "Security Agreements"), and which amount shall be added to the secured balance owed by the Archbold Entities to Farmers and shall be secured by Farmers' current security interest and priority in the Collateral.

Farmers further moves the Court to waive the time periods stated in Local Rule 2(D)(2) and to hold a hearing on this emergency motion as soon as possible if necessary, or in the alternative to grant this emergency motion immediately without a hearing. The Collateral in which Trupointe claims a secured interest includes certain hogs that are scheduled to go to market on or about May 18, 2011, but which cannot be sold until Trupointe's claims are resolved and an order approving such resolution is entered by the Court. The Collateral will significantly diminish in value if the subject hogs are not sold at the appropriate time; therefore it is imperative that the settlement proposed herein be approved and entered by the Court as soon as practically possible.

Trupointe, the Receiver, the Andersons, and Andersons Agriculture stipulate, consent, and agree to the settlement terms proposed in and the relief requested by Farmers' emergency motion. These parties do not believe that any party or creditor will be harmed by the granting of this emergency motion.

This emergency motion is supported by the attached Memorandum in Support, the Verified Complaint (with its attachments), and the Order Appointing Receiver. A proposed Judgment Entry granting the relief requested herein has been submitted with this emergency motion.



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MEMORANDUM IN SUPPORT

Farmers initiated this litigation by filing the Verified Complaint on April 12, 2011. That same day, Farmers also moved the Court to appoint a receiver over the Archbold Entities' assets. The Order Appointing Receiver was entered, and the Receiver began the process of preserving and protecting the Collateral for the benefit of the Archbold Entities' creditors.

Farmers is the holder of the Notes, pursuant to which the Archbold Entities are alleged to be indebted to Farmers in an amount in excess of \$4.7 million. That debt is secured by a lien on substantially all of the Collateral, and Farmers contends that it has a first priority position. In the Security Agreements, Farmers asserts that the Archbold Entities (a) pledged the Collateral to secure the payment of all present and future debts to Farmers; (b) accepted a duty to protect the Collateral and Farmer's interest in the Collateral, including against competing claims in the Collateral; and (c) authorized Farmers to do anything Farmers deems reasonably necessary to protect the Collateral and Farmers' interest in the Collateral.

A significant majority of the Collateral is hogs. The Archbold Entities have over 80,000 hogs. Trupointe is allegedly responsible for the boarding and feeding of about 9,000 of the hogs that were placed prior to the appointment of the Receiver. Of those 9,000 hogs being fed by Trupointe, Trupointe asserts a possessory lien on 7,000 of the hogs (which 7,000 hogs are the "Hogs"). Trupointe has indicated that it is owed

\$388,614.76 from the Archbold Entities for feed and board provided prior to the appointment of the Receiver. Trupointe claims that, of that amount, \$271,327.32 is secured by a first-priority possessory lien on the Hogs, pursuant to O.R.C. §1311.48. Farmers and the Receiver dispute Trupointe's asserted security interest in the Hogs. If Trupointe has a first-priority lien on the Hogs (or any of the Collateral), then the Archbold Entities may have violated and defaulted on the terms of the Security Agreements and Farmers asserts that it is authorized to take any reasonable steps to protect its security interest in the Hogs (and other Collateral) and to charge the cost of doing so to the Archbold Entities. Farmers contends that such charges are secured by Farmers' current security interest and priority in the Collateral.

A portion of the Hogs needs to be sold at market on or about May 18, 2011, and the remaining Hogs will need to be sold shortly thereafter. The Receivership Property will be damaged if the Hogs are not sold at the appropriate time in their growing cycle, because Receivership Property will continue to be expended to feed and board the Hogs without any corresponding increase in the Hogs' value. To the contrary, the Hogs will decrease in value if not brought to market at the appropriate time. The Receiver, Farmers, and all secured and unsecured creditors, therefore, have an interest in selling the Hogs at the appropriate time in order to maximize the value of the Collateral.

The Receiver, Farmers, and Trupointe recognize that a significant amount of time, legal expenses, and judicial resources will be expended if they choose to litigate the issue of whether Trupointe holds a possessory lien on the Hogs and, if so, the priority of such lien. Additionally, the litigation of this lien/priority issue will deplete the Collateral because (a) the value of the Hogs ready to go to market will decrease as the costs of keeping them alive continue to accrue; (b) the Receiver's fees incurred in litigating this

issue must be paid from the Collateral; and (c) Farmers' legal fees incurred in this action may also be chargeable against the Collateral pursuant to the terms of the Notes and the Security Agreements.

For the purpose of protecting and preserving the Collateral, and its secured interest in the Collateral, Farmers has offered and agreed to pay Trupointe the sum of \$135,663.66, which represents one-half of Trupointe's asserted secured claim in the Collateral. Farmers will advance the payment to Trupointe pursuant to the terms of the Notes and the Security Agreements, and that sum will be added to the secured debt owed from the Archbold Entities to Farmers and shall be secured by Farmers' current security interest and priority in substantially all of the Collateral. After receipt of the payment from Farmers, the total amount Trupointe claims it is owed by the Archbold Entities will be \$252,951.10 and this entire amount will be unsecured. Trupointe agrees to accept the \$135,663.66 payment from Farmers in full satisfaction of any and all secured claims it has or claims to have in the Collateral. Trupointe expressly agrees that in exchange for Farmers' payment, it is releasing any security interest it has or claims to have in the Hogs or other Collateral, and that any pre-receivership debt owed from the Archbold Entities to Trupointe above and beyond the amount paid by Farmers shall be and remain unsecured.

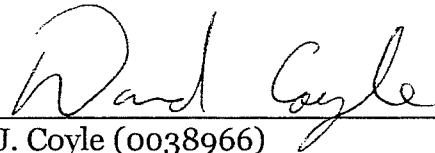
In agreeing to the above-specified settlement terms, and by stipulating to the relief requested in this emergency motion, Trupointe acknowledges that it is a creditor of the Archbold Entities and that it received a copy of the Order Appointing Receiver, and consents to the jurisdiction of this Court to enter and enforce the settlement terms contained in this emergency motion and in the proposed judgment entry submitted with this motion.

In further support of this emergency motion, the Receiver acknowledges that the receivership estate will benefit from the relief requested herein. The Receiver took the position that the Court Order Appointing Receiver prevented Trupointe, as well as the farmers known as Homan, Bergman, Knapke and Williams, from refusing to turn over the Hogs which are Receivership Property to the Receiver. Trupointe has indicated that if it were to release the Hogs to the Receiver that it would effectively lose its possessory lien and be unable to make such argument in the future. The Receiver was prepared to bring this matter to the Court for resolution as to whether Trupointe was in violation of the Court Order and/or whether Trupointe was permitted to withhold the Receivership Property from the Receiver under RC 1311.48 and RC 1311.49. The Receiver recognizes that this type of adversarial proceeding would be costly to all parties involved. As discussed above, this proposed settlement will prevent the Collateral from being used to fund unnecessary litigation and will allow the Hogs to go to market on time. The settlement will also eliminate \$135,663.66 worth of alleged secured claims, which will enable more Collateral to be available to satisfy the claims of other secured and unsecured creditors.

Accordingly, Farmers, with the stipulation, consent, and agreement of Trupointe, the Receiver, the Andersons, and Andersons Agriculture, moves the Court to enter an order approving and journalizing the following settlement terms:

1. Farmers shall pay the total sum of \$135,663.66 to Trupointe;
2. The \$135,663.66 paid to Trupointe by Farmers shall be added to the total secured indebtedness owed from the Archbold Entities to Farmers, and shall be secured by Farmers' current security interest and priority in the Collateral;

3. Upon Trupointe's receipt of \$135,663.66 from Farmers, any and all security interests Trupointe has or claims to have in the Collateral shall be and are released;
4. Any and all additional sums owed from the Archbold Entities to Trupointe that arose before the Receiver was appointed shall be and are unsecured; and
5. The Receiver reserves the right to object to the unsecured claim of Trupointe.



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Stipulated, Consented, and Agreed to by:

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 CONSENT
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Emergency Motion to Settle Alleged Secured Claim of Trupointe Cooperative, Inc.** was sent on May 13, 2011, by first class United States mail, postage prepaid, upon the following:

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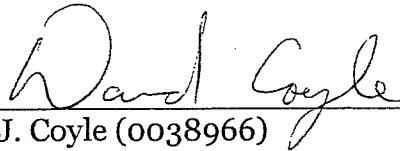
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A handwritten signature in cursive script that reads "David Coyle". The signature is written in black ink and is positioned above a horizontal line.

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Attorneys for Plaintiff