

**IN THE COURT OF COMMON PLEAS  
FULTON COUNTY, OHIO**

THE FARMERS & MERCHANTS  
STATE BANK,

Plaintiff,

-vs-

ARCHBOLD ELEVATOR, INC., et al.,

Defendants.

) Case No. 11CV000128

) Judge Barber

) **RECEIVER'S EMERGENCY MOTION  
TO APPROVE SALE OF ASSETS AND  
REQUEST FOR IMMEDIATE  
HEARING**

) Gerald R. Kowalski (0022323)

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Receiver and Counsel

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Now comes the Receiver and moves this Court for an order scheduling an emergency hearing on the Receiver's motion to approve the sale of certain assets as a result of the bid process and the sale of certain real estate that occurred at a public auction. Defendant William Fricke, through his counsel, has indicated that he opposes the sale of these assets. Time is of the essence since a significant portion of these sales must occur before the fall harvest which may start within the next week. As is more fully explained in the following memorandum, the Receiver moves this Court to schedule an emergency hearing in order to approve these sales.

## MEMORANDUM

As the Receiver has explained in his status reports filed with the Court, the Receiver implemented a detailed bid process for the sale of the assets associated with the Archbold Entity businesses. The bid process required bids to be submitted to the Receiver by August 30, 2011. After receiving the bids, the Receiver initiated further negotiations with the entities that provided bids, specifically with respect to the elevator property. Final negotiations through a phone auction occurred on September 9, 2011 at noon and were completed at approximately 12:45 p.m. On September 9, 2011, the Receiver had completed the bid process and was prepared to recommend the sale of the various assets of the Archbold Entities. The Receiver had scheduled a conference call at 10:00 a.m. on September 12 with all of the parties and secured creditors to announce the results of the bid process and to seek the parties and creditors approval to the Receiver's recommendations. However, unbeknownst to the Receiver until approximately 1:15 p.m. on September 9, 2011, William Fricke, one of the owners of Archbold Entities, filed a Chapter 11 petition in bankruptcy earlier that day. The bankruptcy filing was opposed by various creditors and the bankruptcy court scheduled an all-day evidentiary hearing on September 26, 2011. At the conclusion of that hearing, the bankruptcy court dismissed the bankruptcy filing instituted by William Fricke.

The conference call announcing the bids which was originally scheduled for September 12, 2011, was held on Wednesday, September 28, and the results of the bids were announced in order to seek the approval of all of the parties. During that call, William Fricke, through his counsel, indicated that he was opposing the sale of these assets and that he would provide a bid for these assets in excess of the current amounts.

Since the Receiver was appointed on April 12, 2011, Mr. Fricke, individually and through his counsel, has repeatedly assured the Receiver that he was in the process of obtaining complete refinancing to pay off all of the creditors. Later, Mr. Fricke, individually and through

his lawyers, indicated that he would be providing a bid by the deadline of August 30, 2011 for the Archbold Entity assets. Mr. Fricke never provided a refinancing proposal nor did he submit a bid for any assets. It appears that Mr. Fricke's bankruptcy filing was a desperate effort to somehow remain in control of this failed enterprise. In the conference call which was held on September 28, 2011, Mr. Fricke's counsel advised the Receiver that the Receiver would receive Mr. Fricke's "bid package" by 5:00 on September 28, 2011. No bid package was received.

Time is of the essence. The successful bid for the elevator and feed operation is contingent upon the new owner's ability to obtain possession and management by the time of the fall harvest which is imminent. With the Receiver's recommendation, the successful bidder has been in contact with The Andersons, the current operator of the elevator, to reach a tentative agreement to turn the operation of the elevator over to this bidder immediately. If this sale does not receive Court approval immediately, the value of the elevator and the feed facility decreases significantly once the harvest starts.

Since the Receiver has not received Mr. Fricke's bid as promised, the Receiver cannot comment in any respect on its appropriateness. If a bid package is received, the Receiver will attempt to file an appropriate memorandum in advance of any hearing to advise the Court of the Receiver's position. In any case, the Receiver and all of the creditors and parties are requesting this Court to schedule an emergency hearing in order to approve the Receiver's recommendations on the sale of the Archbold Entity assets.

Respectfully submitted,



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Renisa A. Dorner  
Receiver and Counsel

**CERTIFICATE OF SERVICE**

This is to certify that on this 29th day of September, 2011, a copy of the foregoing *Receiver's Emergency Motion to Approve Sale of Assets* was served by email and ordinary United States mail upon:

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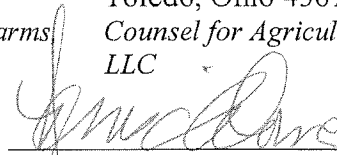
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