

FILED  
FULTON COUNTY  
COMMON PLEAS COURT  
2011 OCT 24 A 9:04  
PAUL E. MACDONALD  
CLERK

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 MOTION FOR  
INSTRUCTIONS CONCERNING  
SALE OF REMAINING ASSETS**

) Gerald R. Kowalski (0022323)

Renisa A. Dorner (0040192)

) COOPER & WALINSKI, LPA  
900 Adams Street

) Toledo, Ohio 43604

Telephone: (419) 241-1200

) Telefax: (419) 720-3421

Email: kowalski@cooperwalinski.com

) dorner@cooperwalinski.com

) Receiver and Counsel

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Now comes the Receiver and hereby moves this Court to schedule a hearing to determine the disposition of the remaining assets of the Archbold Entities – three sow units and the Kainos nursery. In the Receiver's Fifth Status Report, the Receiver indicated that he was in the process of reviewing the bids for these assets. Because of competing interests for these assets and the understandable failure of all parties to agree to the appropriate disposition, the Receiver moves this Court to hold an evidentiary hearing at which time all interested parties can present evidence and argument so that the Court can determine and order the sale of these assets to the most appropriate entity.

## MEMORANDUM

This Court has approved the sale of significant assets of the Archbold Entities with the consent of all parties: the sale of the weaner pigs to IPC (June 23, 2011), the sale of the sow units at the Liberty Center and Rolling Meadows Farms (August 23, 2011), and the sale of the elevator and feed operation (October 4, 2011). The Receiver has received these bids for the remaining assets:

### O-MI-O

–	Richard Lange of Republic Mills	\$138,000
–	Michael E. Mull, DVM	\$250,000
–	William Fricke	\$300,000

### Henry Pig

–	Mark and Stephanie Sattler	\$465,000
–	William Fricke	\$475,000

### Leipsic / Fenstermaker

–	Fenstermaker Farms	\$490,000
–	William Fricke	\$575,000

### Kainos Nursery

–	Kalmbach Feeds	\$125,000
–	William Fricke	\$150,000

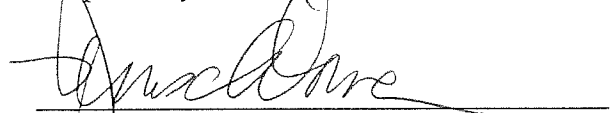
The bid by William Fricke was for all four facilities for a total of \$1,500,000. After receiving the Fricke combined bid, the Receiver requested him to break his bid down for each facility.

The bid procedure required each bidder to provide a certified check for one percent of the bid amount and proof of adequate financing to complete the transaction. The individual bidders

provided the appropriate deposit and either financing information from a commercial bank or an indication of the ability to pay cash at the time of closing. The bid of William Fricke was accompanied by a check exceeding the minimum deposit. However, the funding information provided by Mr. Fricke is not from a bank or recognized lending facility. Based on this information, the Receiver is not confident about Mr. Fricke's ability to obtain financing in order to close these transactions. Furthermore, the individual bidders have all indicated their reluctance to increase their bids until they are certain that Mr. Fricke has financing and can complete these deals. The individual bidders have advised the Receiver that they do not wish to enter into a bidding war with a "phantom bidder" just to drive the price of these assets up. Testimony elicited at the bankruptcy court hearing on September 26, 2011 that the State of Ohio and the Fulton County Prosecutor were investigating possible criminal conduct on Mr. Fricke causes the Receiver, the secured creditors and the individual bidders to question Mr. Fricke's ability to obtain financing to purchase these assets.

Although the Receiver has obtained the consent of all parties to the previous sales, consent cannot be reached on the sale of these assets. Therefore, the Receiver requests this Court to hold an evidentiary hearing so that all interested parties including the bidders and creditors can present testimony and argument so the Court can then determine the highest and best bid for these assets.

Respectfully submitted,



Gerald R. Kowalski, Receiver  
Reniša A. Dorner  
Receiver and Counsel

CERTIFICATE OF SERVICE

This is to certify that on this 19<sup>th</sup> day of October, 2011, a copy of the foregoing

*Receiver's Motion for Instructions Concerning Sale of Remaining Assets* was served by email

and ordinary United States mail upon:

David J. Coyle (coyle@slk-law.com)  
Nathan A. Hall (nhall@slk-law.com)  
Shumaker, Loop & Kendrick, LLP  
100 Jackson Street  
Toledo, Ohio 43604  
*Counsel for Plaintiffs*

Steven L. Diller (sdiller@dillerandricellc.com)  
Dillon W. Staas (dstaas@dillerandricellc.com)  
Diller & Rice, LLC  
124 E. Main Street  
Van Wert, Ohio 45891  
*Counsel for Defendant D&D Ingredient  
Distributors, Inc.*

Brian C. Kalas (kalas@mchughlaw.com)  
McHugh & McCarthy, Ltd.  
5580 Monroe Street  
Sylvania, Ohio 43560  
*Counsel for Defendants William & Lynette Fricke*

James R. Patterson (jpatterson@agri.ohio.gov)  
Ohio Department of Agriculture  
8995 East Main Street  
Reynoldsburg, Ohio 43068


James R. Jeffery (jjeffery@snlaw.com)  
Laurie J. Pangle (lpangle@snlaw.com)  
James P. Silk, Jr. (jsilk@snlaw.com)  
Spengler Nathanson P.L.L.  
Four SeaGate, Suite 400  
Toledo, Ohio 43604-2622  
*Counsel for Defendants The Andersons, Inc.  
and The Andersons Agriculture Group, L.P.*

Elizabeth J. Hall  
(betsy\_hall@andersonsinc.com)  
480 W. Dussel Drive  
Maumee, Ohio 43537  
*Counsel for Defendants The Andersons, Inc. and  
The Andersons Agriculture Group, L.P.*

Michael S. Messenger  
(mmessenger@rcolaw.com)  
Mark A. Ozimek (mozimek@rcolaw.com)  
Robison, Curphey & O'Connell  
Ninth Floor, Four SeaGate  
Toledo, Ohio 43604  
*Counsel for Defendant Fenstermaker Farms,  
Inc.*

Gregory L. Arnold (glalawyer1@aol.com)  
Daniel C. Arnold (dcalawyer1@yahoo.com)  
Law Offices of Gregory L. Arnold &  
Associates, Ltd.  
5749 Park Center Court  
Toledo, Ohio 43615  
*Counsel for Agricultural Products Extension,  
LLC*

Toyota Motor Credit Corporation  
c/o Statutory Agent  
CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

  
Gerald R. Kowalski, Receiver  
Renisa A. Dornier  
Receiver and Counsel

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THE FARMERS & MERCHANTS  
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) Judge Barber

) **ORDER**

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This matter came on for consideration of the Receiver's Motion for Instructions Concerning Sale of the remaining assets including three sow units and a nursery that are part of the Archbold Entities. The Court finds the Receiver's Motion for Instructions well taken. The Court hereby orders this matter scheduled for an evidentiary hearing on November 1, 2011 at 9:00 a.m. All interested parties including the bidders and creditors are requested to appear on that date to present testimony and arguments so that the Court can determine the highest and best bid for these assets. The Court orders the Receiver to provide a copy of this Order to all of the bidders.

IT IS SO ORDERED.

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JUDGE BARBER