

FILED  
FULTON COUNTY  
COMMON PLEAS COURT  
2011 DEC 13 A 11: 36  
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 TO  
APPROVE COMPROMISE OF  
SECURED DEBT OF FARMERS &  
MERCHANTS STATE BANK**

) Gerald R. Kowalski (0022323)

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Receiver and Counsel

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The Receiver moves this Court for an order approving a compromised agreement with The Farmers & Merchants State Bank to pay off their first priority secured debt for \$1,912,121.28. This compromise has been approved by all parties.

**MEMORANDUM**

On October 24, 2011, this Court approved a \$4,000,000 payment to The Farmers & Merchants State Bank to partially pay off their first priority secured interest. Since that payment has been made, the Receiver continues to accumulate funds from the sale of the Receivership assets. At the present time, the Receiver has more than \$4,000,000 in cash.

The Receiver has had lengthy and extensive discussions with The Farmers & Merchants State Bank concerning the total amount due pursuant to their various notes and mortgages. As of November 18, 2011, the total amount due and owing The Farmers & Merchants State Bank for principal, interest, late charges and costs totals \$1,962,121.28. As a result of negotiations with the Receiver, the Bank is willing to reduce the payoff amount by \$50,000 and to waive interest and costs accruing after November 18, 2011 of approximately \$900 / day. Thus, the Bank is willing to compromise the total amount due and owing under their various notes and mortgages by approximately \$75,000.

The Receiver has shared all of the information concerning these negotiations with all the parties to this lawsuit. All of the parties to this lawsuit consent to this compromised payoff. Agricultural Products Extension (APEX), an intervening party to this lawsuit, claims a secured interest in the Receivership proceeds. The Receiver has been in discussions with counsel for APEX and APEX is unwilling to concede for all purposes that The Farmers & Merchants State Bank has a first priority secured interest in the Receivership assets. However, APEX consents to this final payment to The Farmers & Merchants State Bank as long as limited funds (\$200,000) are held in a segregated account. A similar requirement was made by APEX concerning the initial payment to The Farmers & Merchants State Bank. As requested by APEX, the Receiver will continue to hold a minimum of \$200,000 in a segregated account subject to APEX's claimed interest.

If the Court approves this payoff, the Receiver will then begin negotiations with the remaining secured creditors – D&D Ingredient Distributors, Inc., The Andersons, Inc., APEX and the statutory lienholder, the Ohio Department of Agriculture.<sup>1</sup> If the Receiver is unable to obtain consent for a distribution plan to the remaining secured investors and the Ohio

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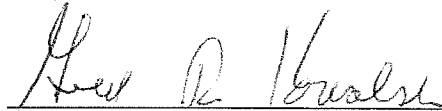
<sup>1</sup>The secured claim of Fenstermaker Farms was resolved through the sale of the assets to Fenstermaker. See this Court's order of November 1, 2011 approving this transaction.

Department of Agriculture, the Receiver will seek instructions from the Court. The Receiver will also be filing a final claims report detailing the claims of the unsecured creditors and the Receiver will be asking the Court to confirm the Receiver's classification of these claims.

The Receiver believes that this compromised payoff to the Farmers & Merchants Bank is in the best interest of the Receivership. The various loan documents of the Farmers & Merchants Bank clearly give the bank a first priority statutory secured interest in the assets of the Archbold Entities. The compromised amount negotiated by the Receiver and consented to by all other parties will save time, costs and additional expense to the Receivership and will result in additional funds being available for the junior creditors.

Therefore, the Receiver moves this Court for an order permitting it to pay \$1,912,121.28 to The Farmers & Merchants State Bank in order to satisfy all claims of The Farmers & Merchants State Bank against the Archbold Entities as well as all claims it has against William and Lynette Fricke personally based upon a guaranty by William and Lynette Fricke related to the credit facilities of the Archbold Entities. (To be clear, neither William Fricke nor Lynette Fricke are released by this Order from any loan that they have, individually or jointly, with Farmers & Merchants State Bank or from any mortgage or other security interest related to any individual loan obligation to Farmers & Merchants State Bank). An order that has been approved by all parties is being submitted to the Court for its consideration.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that on this 8<sup>th</sup> day of December, 2011, a copy of the foregoing

*Receiver's Motion to Approve Compromise of Secured Debt of Farmers & Merchants State Bank*

was served by email and ordinary United States mail upon:

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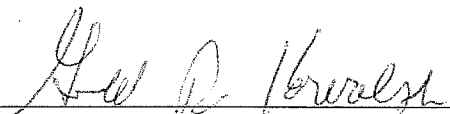
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