

All Objections must be filed by October 2, 2018. Failure to timely file this form with supporting documents will result in a waiver of your right to file an objection. All objections will come before the court for hearing on October 29, 2018, at 9:00 a.m. at the court.

AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

2018 OCT -2 PM 2:59

I. JEAN HECKSTROTH
CLERK OF COURTS

In the Court of Common Pleas of Auglaize County, Ohio
Civil Division

Paul Mastronardi,

Plaintiff,

-vs-

Luis Chibante, et al.,

Defendants.

Case No. 2017-CV-144

**OBJECTIONS TO
PROOF OF CLAIM**

With Supporting Documents Attached

This form is for making an OBJECTION to a claim filed for payment from entities that have been dissolved and the affairs of which are being wound up pursuant to a lawsuit filed in this case. The entities that have been dissolved and no longer exist, but whose affairs are being wound up, are:

Golden Fresh Farms Holdings, Inc., an Ohio corporation, and
Golden Fresh Farms Enterprises, L.P., an Ohio limited partnership.

*Filers must attach copies of any documents that support the objections being raised in opposition to a claim, if any documents exist. Do not attach original documents; the copies you attach may be destroyed after scanning.

The basis of the objection(s) shall be clearly set forth below, or attached as additional pages to be attached to this form. Objections will be heard at the court on Monday October 29, 2018 at 9:00 a.m. If you fail to appear and set forth your objections, they may be deemed *waved* and the claim *may* be allowed.

- Who is the claimant filing the claim that you are objecting to? The Ohio Greenhouse Company (Claim #57)
(Name of that claimant)
- Who is objecting? (your name) Golden Acre Farms, Inc.
- Is your objection based upon the amount of the claim? Yes No
- If so, what amount, if any, should be allowed instead? \$ 0.00 - See Exhibit A (Attach explanation)
- Does the Claimant (in Line 1, above) claim that its claim is Secured? No Yes If yes, do you dispute the validity of that Claimant's lien or security interest? Yes No
- Does the Claimant (in Line 1, above) claim that its claim is based upon credit lent or goods or services provided during the administration of the Receivership (since September 29, 2017) and therefore should receive a priority as an administrative claim?
 Yes No If yes, do you dispute the claim's priority status as "administrative?" Yes No
- Is there any other objection that you have with regard to the claim of Claimant (in Line 1, above)?

Note- You must attach any supporting documentation you have in support of your objection, and you must explain in detail why the Claimant's claim should be denied in whole or in part, or why the Claimant's secured or administrative claim should not receive priority status as either secured or administrative. You may attach affidavits, official documents, and your written explanation in additional pages to this form.

All Objections must be filed by October 2, 2018. Failure to timely file this form with supporting documents will result in a waiver of your right to file an objection. All objections will come before the court for hearing on October 29, 2018, at 9:00 a.m. at the court.

Time for Filing. A proof of claim shall be deemed timely if it is filed with supporting documents not later than 4:30 p.m. on September 18, 2018. All claims filed are open for inspection by the public and all interested parties at the Clerk of Court's office during normal business hours. **Objections shall be deemed timely if filed not later than 4:30 p.m. on October 2, 2018.**

The person completing this form must sign and date it, initial each page attached to it, and it must be filed with the Auglaize County Clerk of Courts, Auglaize County Courthouse, 201 South Willipie Street, Room 043, P.O. Box 409, Wapakoneta, OH 45895, whose hours are: Monday thru Friday, 8 a.m. until 4:30 p.m. A proof of claim is deemed filed only when received and file-stamped by the Clerk.

A person who submits a fraudulent objection may be subject to prosecution for such fraud or attempt under the appropriate criminal code sections. Such person may also be subject to punishment for contempt of court of up to 10 days in jail and up to \$500 fine, or both.

I hereby certify that the undersigned is the:

 Objector; Objector's attorney; Objector's authorized agent; (check one)

and I understand that my signature on this Objection serves as an acknowledgment this Objection is made in good faith based upon accurate information. I certify that I have examined the information in this Objection and attachments and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct, at Cincinnati
Ohio this 22 day of October 2018.

(X) _____ (Signature is mandatory)

Print the name of the person who is completing and signing this claim:

Full Name: Michael L. Scheier, Esq. Title: Partner

Company: Keating Muething & Klekamp PLL

Address: One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202

Contact Phone: (513) 579-6952 Email mscheier@kmkllaw.com

Initial each page

EXHIBIT A

Golden Acre Farms, Inc.'s Explanation for Objection to The Ohio Greenhouse Company Claim

Golden Acre Farms, Inc. ("GAF") objects to the claim filed by The Ohio Greenhouse Company ("TOGHC") – Claim #57. The claim is for an "unliquidated contingent liability that could reach or exceed \$250,000.00." (See TOGHC Proof of Claim Form, Claim #57, p. 2). The claim should be disallowed, as explained in more detail below.

Background

On April 25, 2018, the Court issued an "Order Regarding Sale Procedures," in which the receiver stated his intent to sell all, or substantially all, of the assets of GFF Enterprises and Golden Fresh Farms Holdings, Inc. ("GFF Holdings") (collectively, the "GFF Entities"). (See April 25, 2018 Order Regarding Sale Procedures). Several bids were received, including a bid from Mastronardi Produce – USA, Inc. ("MPL") in the form of an Asset Purchase Agreement (the "APA"). (See APA, Exhibit 1 to TOGHC Proof of Claim Form). The receiver determined that MPL's APA was the highest and best offer, and sold the assets of the GFF Entities to MPL.

In the APA, MPL proposed to purchase the assets of the GFF Entities, except for the Excluded Assets as set forth in the APA. By its terms, the APA stated that the closing of the sale was "contingent upon the Court issuing an order approving the sale of the Purchased Assets to Buyer (the "Sale Order"). The Sale Order shall, among other things, approve . . . the sale of the Purchased Assets to Buyer on the terms set forth herein and free and clear of all liens . . ." (See APA, Exhibit 1 to TOGHC Proof of Claim Form, ¶ 5.1). The receiver obtained the required Sale Order, which the Court issued on June 25, 2018. (See June 25, 2018 Order of Sale, Exhibit 2 to TOGHC Proof of Claim Form). In the Order of Sale, the Court found that the sale should proceed, "with such sale to be free and clear of all liens on all real property and all personal property." (*Id.* at 7).

MPL assigned the APA to TOGHC prior to the closing of the sale. TOGHC's rights are thus defined and limited by the terms of the APA. TOGHC filed a claim against the receivership estate based on an investigation that was instituted in March 2018 by the U.S. Department of Labor ("DOL") to evaluate the GFF Entities' compliance with certain wage and hour laws. The basis of TOGHC's claim is that the receivership estate should bear the burden of any liability assessed against TOGHC by the DOL.

Basis for GAF's Objections

GAF objects to TOGHC's claim for two reasons. First, any wage and hour liability that the GFF Entities and/or the receivership estate might have runs to the DOL. The DOL has filed a claim against the receivership estate relating to its wage and hour investigation. (See U.S. Department of Labor Wage & Hour Division Proof of Claim Form, Claim #62). Because the DOL has already filed this claim, TOGHC's claim against the receivership estate is duplicative, and should be disallowed.



Second, the APA does not provide a contractual right to make this claim. TOGHC cites to the APA section providing that "Buyer is not assuming any other liabilities whatsoever of any kind or nature including, but not limited to, any contract liabilities, any employment related liabilities, independent contracts, H-2A workers, or otherwise." (See Exhibit 1 to TOGHC Proof of Claim Form, ¶ 1.3). This provision is simply an agreement between seller and buyer about assumption of liabilities. It is not a promise that the buyer (TOGHC) will never be sued by a third party for the disclaimed liabilities, nor is it a promise that the seller will defend and indemnify the buyer if such a lawsuit is filed. Indeed, the APA includes no specific representations or warranties about employment-related liabilities, or any indemnification provisions related to such liabilities. Of course, TOGHC can defend against any such DOL claim made against TOGHC by using, among other things, the APA. But the APA does not provide TOGHC any rights against the seller or the receivership estate.

Accordingly, the Court should deny the TOGHC claim because it is duplicative of the DOL claim, and because TOGHC has no contract claim under the APA against the receivership estate for breach of a representation or an indemnification provision requiring the seller to defend and/or indemnify the buyer from any such liabilities.

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A handwritten signature or set of initials, possibly "KMK", written in black ink in the bottom right corner of the page.

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RECIPIENT INFORMATION:

NAME OF COURT: Anglaize County Common Pleas
FAX NUMBER: 419.739.4768

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CASE INFORMATION:

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CASE NUMBER: 2017-CV-144
TITLE OF THE DOCUMENT: Objections to proof of claim #57
JUDGE: Pepple

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* If a Judge or case number has not been assigned, please state that fact in the space provided.