

AUGLAIZE COUNTY  
COMMON PLEAS COURT  
FILED

2018 NOV -9 AM 11:26

I. JEAN HECKSTROTH  
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF AUGLAIZE COUNTY, OHIO

PAUL MASTRONARDI	)	CASE NO. 2017 CV 0144
	)	
Plaintiff,	)	JUDGE PEPPLE
	)	
vs.	)	
	)	RECEIVER'S AMENDED
LUIS CHIBANTE, et al.	)	RECOMMENDATION REGARDING
	)	PROOF OF CLAIM NUMBER 50
Defendants.	)	

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On October 22, 2018, the Receiver objected to Proof of Claim No. 50 asserted by Thermo Energy Systems, Inc. ("Creditor") on the grounds that the amount claimed exceeded the amount reflected on the accounts payable. The Proof of Claim was heard on October 29, 2018. As directed by the Court, the Receiver filed supplemental evidence on November 2, 2018. The Receiver has since gathered additional information and discussed this matter with the Creditor.

With the consent of the Creditor as reflected below, the Receiver submits this Amended Recommendation.

On and prior to September 29, 2017: The Creditor filed a Proof of Claim stating that it was owed \$793,551.55 USD on September 29, 2017. Creditor constructed the greenhouse. The Receiver contends that Golden Fresh Farms Enterprises, L.P. ("Enterprises") provided certain labor at various times during the construction and prior to September 29, 2017, and that Enterprises is entitled to a credit for such labor. The Creditor generally denies the amount claimed by the Creditor, and further contends that any credit should be less than that claimed by the Receiver. The Creditor and the Receiver entered into negotiations on this issue, and subject to the Court's

approval, submit that a figure of \$40,000.00 USD be assigned as the credit to be applied for work performed prior to September 29, 2017.

Creditor and the Receiver further agree that an additional adjustment should be made to the amount claimed to be due to Creditor as of the date of September 29, 2017. This adjustment arises from the omission of a conversion from Canadian Dollars to United States Dollars. That omission resulted in an overpayment by \$38,196.75 by Enterprises. The omission pertains to Invoice 13248 dated October 25, 2016 (copy included in the Proof of Claim) whereby Enterprises was invoiced \$568,740.00 CAD. Because Enterprises paid \$50,000.00 CAD directly to a supplier listed on that invoice, on February 13, 2017, Creditor issued a credit memo on Invoice 13389 (copy included in Proof of Claim). The amount of the credit was \$50,000.00 CAD to be applied against the \$568,740.00 CAD invoice. Thereafter, the Creditor and Enterprises agreed that invoices should be expressed in United States Dollars instead of Canadian Dollars. Creditor then withdrew the invoice with the remaining balance of \$518,740.00 CAD and re-issued a new invoice for \$430,000.00 USD in Invoice 13677 (copy included in Proof of Claim). The adjustment is necessary because the \$430,000.00 USD invoice is relatively equivalent to the original \$568,740.00 CAD invoice instead of the actual \$518,740 CAD balance.

Creditor and the Receiver agree that this was an inadvertent mistake that did not take into account the previous \$50,000.00 CAD credit to which Enterprises was entitled before the balance was converted to United States Dollars. Creditor and the Receiver agree, subject to the Court's approval, that the \$50,000.00 CAD credit converts to a \$38,196.75 USD credit and that that amount should be applied against the amount claimed due by the Creditor on September 29, 2017.

These two adjustments can be expressed as \$793,551.55 USD minus \$40,000.00 USD = \$753,551.44 USD minus \$38,196.75 USD = \$715,354.69 USD as the adjusted amount due to Creditor on September 29, 2017.

After September 29, 2017: The Proof of Claim of the Creditor states that the Creditor provided goods and services after September 29, 2017 that had a total value of \$153,984.44 USD. Three invoices were included in the Proof of Claim in support of this figure. Invoice 14202 dated July 26, 2018 is in the amount of \$1,035.00 USD and was for goods and services provided after the date of the sale of the assets of the Receiverships on June 29, 2018, and, for that reason, is not owed by the Receiverships. The other two invoices are Invoice 13946 in the amount of \$152,213.00 USD and Invoice 14002 in the amount of \$736.44 USD, both of which reflect goods and services provided after September 29, 2017 and before the sale of assets on June 29, 2018.

The total value of goods and services provided by Creditor after September 29, 2017 and before the sale of assets on June 29, 2018 is \$152,949.44 USD. Creditor and the Receiver agree, subject to the Court's approval, that this figure is the amount owed to Creditor after September 29, 2017.

The Receiver hereby recommends that such Creditor's claim be ALLOWED as follows:

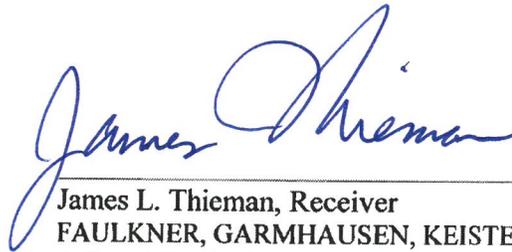
\$ -0- _____	Secured
\$ 152,949.44 USD _____	Administrative
\$ 715,354.69 USD _____	Unsecured
\$ -0- _____	Other

APPROVED:

Themo Energy Systems, Inc.

By: Karen Collard

Karen Collard, Bookkeeper



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent via email this 6<sup>th</sup> day of November 2018 to the following:

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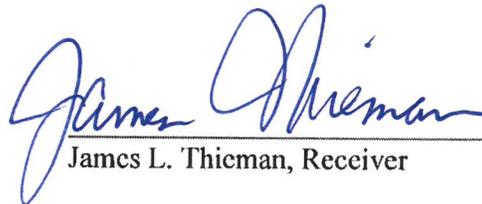
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And to the Creditor: ATTN: Karen Collard, Bookkeeper, Thermo Energy Systems, Inc. at email address [admin@thermoenergy.ca](mailto:admin@thermoenergy.ca)

  
James L. Thieman, Receiver