AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

2018 DEC 12 PM 2:46

I. JEAN MECKSTROTH
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 18
Defendants.	)	

De Lage Landen filed a Proof of Claim on August 20, 2018. Golden Acre Farms, Inc. filed an Objection to this claim on October 2, 2018. The Receiver filed an Objection on October 22, 2018. The matter was heard by the Court on October 29, 2018. Claimant did not appear. On October 31, 2018, and without leave of Court, De Lage Landen filed an Amended Proof of Claim. Since then, the Receiver has obtained documents and has filed supplemental evidence with the Court. The Receiver has further reviewed this claim and has engaged in discussions with interested parties.

It has taken a considerable amount of effort to determine the grounds upon which this claim is based. Although the claim was originally asserted in the amount of $78,631.42, it should have been for less. There are three fork lifts at issue, and three leases associated with them. It was determined that one of the leases is a finance lease and the other two are true leases. On June 29, 2018, pursuant to an Asset Purchase Agreement, the assets of the Receiverships (including whatever interest the Receiverships had in the three forklifts) were sold to The Ohio Greenhouse Company, free and clear of liens. De Lage Landen filed a UCC Financing Statement on the finance

lease. That lien was removed by Order of this Court, and the lien attached to the sale proceeds by operation of law. The UCC Financing Statement was cancelled. Pursuant to the terms of the Asset Purchase Agreement, The Ohio Greenhouse Company did not assume the two true leases.

Other details regarding the finance lease and two true leases are set forth in the letter dated November 29, 2018 from the Receiver to De Lage Landen. A copy of that letter is attached as Exhibit A. As reflected in Exhibit A, the Receiver exercised his authority to repudiate the two true leases, effective on November 29, 2018, and instructed De Lage Landen to pick up the two forklifts that are the subject to the two true leases.

As requested by the Receiver, De Lage Landen provided payoff information for the finance lease. A copy of the payoff is attached as Exhibit B. The amount of the payoff is $18,877.77 if payment is received by January 2, 2019. In addition, lease payments (as explained in Exhibit A) in the total amount of $1,609.96 are due by the Receiverships to De Lage Landen.

Upon receipt of the payoff, ownership of the forklift that is the subject to the finance lease will be transferred by De Lage Landen. Because The Ohio Greenhouse Company is entitled to this asset free and clear of all liens, the forklift will be owned by it upon such payment. Because The Ohio Greenhouse Company has had use of the two forklifts subject to the two true leases since the time of the sale of the assets until the leases were repudiated, it is responsible for those lease payments, and has expressed a willingness to honor that. (Exhibit C)

As evidenced by their signatures below, De Lage Landen and The Ohio Greenhouse Company concur in the Amended Recommendation of the Receiver that follows and agree to be so bound upon the Court's approval of this Amended Recommendation.

Accordingly, the Receiver hereby amends his previous filing and recommends the following:

1. The claim of De Lage Landen be ALLOWED as a SECURED claim in the amount of $18,877.77 with that amount to be paid by the Receiver from funds held by the Receiver in the IOLTA account of his counsel;
2. The claim of De Lage Landen be ALLOWED as an ADMINISTRATIVE claim in the amount of $1,609.96 with that amount to be paid by the Receiver from funds held by the Receiver in the IOLTA account of his counsel;
3. If the date of the two payments referred to above is delayed for unanticipated reasons, the Receiver is authorized to satisfy, as may be necessary, from funds held in the IOLTA account of his counsel any per diem charges;
4. Upon receipt of the payoff, the forklift that is the subject to the finance lease shall be owned, free and clear of all liens, by The Ohio Greenhouse Company;
5. Upon payment to De Lage Landen of the payments as provided above, Golden Fresh Farms Enterprises, L.P. is fully released of any further obligations to De Lage Landen;
6. The November 29, 2018 repudiation by the Receiver of the two true leases is approved;
7. De Lage Landen is authorized to take possession of the two forklifts that are the subject of the two true leases, and if it has already done so, such action is approved;
8. The Ohio Greenhouse Company agrees to pay the lease payments and such other charges as provided in the agreements with De Lage Landen for the two forklifts that are the subject of the two true leases for the period of time from the purchase of the assets of the Receiverships on June 29, 2018 through the date of the repudiation of the two true leases (November 29, 2018), and further, that De Lage Landen agrees to accept

such payment in full satisfaction of all obligations that Golden Fresh Farms Enterprises, L.P. may have otherwise had under the two true leases.

Approved:

De Lage Landen (Claimant)

By: Russell Bender 12/10/18

Russell Bender, Litigation Specialist/Authorized Agent

Date: —

The Ohio Greenhouse Company

By: James Thieman, Receiver

~~For By:~~ Allan Daily, Atty for The Ohio Greenhouse Company per e-mail of Dec. 9, 2018 @ 9:49 a.m. (per attached)

Its Counsel or other Authorized Agent

Date: 12-12-18

James L. Thieman, Receiver
FAULKNER, GARMHAUSEN, KEISTER & SHENK
A Legal Professional Association
Courtview Center - Suite 300
100 South Main Avenue
Sidney, OH 45365
(937) 492-1271 (telephone)
(937) 498-1306 (facsimile)
jthieman@fgks-law.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent via email this 12th day of December 2018 to the following:

Michael L. Scheier
Jonathan M. Hiltz
Jacob Rhode
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, OH 45202

Marion H. Little, Jr.
Matthew S. Zeiger
Zeiger, Tigges & Little LLP
3500 Huntington Center
41 South High Street
Columbus, OH 43215

Ronald E. Gold
A.J. Webb
Jennifer J. Morales
Frost Brown Todd LLC
3300 Great American Tower
301 E. Fourth Street
Cincinnati, OH 45202

Robert M. Zimmerman
Dinsmore & Shohl LLP
1900 First Financial Center
255 East Fifth Street
Cincinnati, OH 45202

Michael Burton
Jauert & Burton LLP
103 S. Blackhoof Street
PO Box 1957
Wapakoneta, OH 45895

Kraig E. Noble
Noble, Montague & Moul, LLC
146 E. Spring St.
St. Marys, OH 45885

Thomas J. Potts
Michael A. Staudt
Faulkner, Garmhausen, Keister & Shenk
100 South Main Avenue, Suite 300
Sidney, OH 45365

And, via email to the Claimant at
rbender@leasedirect.com

James L. Thieman, Receiver

X:\Files\Golden Fresh Farms\Pleadings\Amended Recommendations\Receiver's Recommendation Re POC - Allowed.Docx

FAULKNER, GARMHAUSEN, KEISTER & SHENK
FGKS A LEGAL PROFESSIONAL ASSOCIATION

HARRY N. FAULKNER*
JOHN M. GARMHAUSEN
RALPH E. KEISTER
JAMES R. SHENK**
MICHAEL A. STAUDT
JAMES L. THIEMAN
THOMAS J. POTTS
DANIEL A. BENSMAN
BRYAN A. NIEMEYER
JOHN M. DEEDS
JOSHUA A. KOLTAK
PHILIP M. BORGER
CRAIG T. ALBERS***
CAMERON C. DOWNER

* INACTIVE
** ALSO ADMITTED IN FLORIDA
*** CERTIFIED PUBLIC ACCOUNTANT

Sender's Email: jthieman@fgks-law.com

November 29, 2018

EXHIBIT A

VIA EMAIL
Mr. Russell Bender
De Lage Landen
1111 Old Eagle School Road
Wayne, Pa. 190987
Email: rbender@leasedirect.com

Re: Golden Fresh Farms Receivership, Proof of Claim #18

Dear Mr. Bender:

I serve as the court-appointed Receiver in the case of *Paul Mastronardi et al., v. Luis Chibante et al.*, Case No. 2017-CV-144, currently pending in the Auglaize County, Ohio Court of Common Pleas. I have reviewed the original Proof of Claim filed by De Lage Landen, Claim #18, as well as additional supporting documentation later filed with the Court or provided by you to attorney Philip Borger of our office. My position regarding the Claim is as follows:

The Claim involves three leases for three fork lifts.

1. Lease #100-10135958 is a finance-lease, as Section 3 of the lease makes clear that Golden Fresh Farms ("GFF") would own title to the forklift if the "$1" purchase option had been selected, which it was. Moreover, Section 3 made clear that Golden Fresh Farms was granting to De Lage a security interest, and De Lage filed a UCC financing statement on this lease. Because the forklift is secured and because GFF owned title to the forklift, I plan to make a recommendation to Judge Pepple that this forklift and finance lease be paid off in full. You have previously provided us with this payoff amount, and I am requesting that you please provide us with an updated current, itemized payoff amount.

2. Lease 100-10142852 is a true lease, as Section 3 of the lease makes clear that De Lage owned title to the forklift and as there was to be value left at the end of the lease that would need to be paid off in order for GFF to buy the forklift. No UCC financing statement was filed regarding this lease. On June 29, 2018, GFF ceased its business operations. GFF never missed a payment prior to this date, but, given that this cessation date fell between invoice dates, GFF arguably may owe for up-to one month's payment of $503.13, plus $26.89 for a monthly insurance charge, for a total of $530.02. I plan to recommend to the Court that $530.02 be paid to De Lage as an administrative claim.

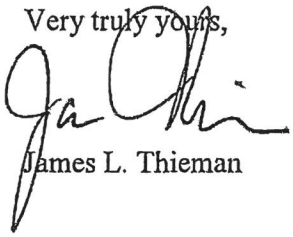
3. Lease 100-10135953 is a true lease, as Section 3 of the lease makes clear that De Lage owned title to the forklift and as there was to be value left at the end of the lease that would need to be paid off in order for GFF to buy the forklift. No UCC financing statement was filed regarding this lease. GFF appears to have missed an April 2018 payment prior to its ceasing business operations, but, given that this cessation date fell between invoice dates, GFF arguably may owe for an additional month. As such, GFF may owe two monthly payments of $512.92, plus two monthly insurance charges of $27.05, for a total of $1,079.94. I plan to recommend to the Court that $1,079.94 be paid to De Lage as an administrative claim.

Under Ohio receivership law, a Receiver has the authority to repudiate executory contracts that are unprofitable or undesirable to the Receivership. Because GFF ceased doing business, the two true leases are not desirable. This letter is notice that, as Receiver, I hereby repudiate both of the true leases.

It is my understanding that The Ohio Greenhouse Company, which is the company that purchased the assets held by the Receivership, recently attempted to assume the two true leases, but was unable to come to terms with De Lage. I would cooperate if De Lage and The Ohio Greenhouse Company wish to resume that effort, provided it can happen quickly. I am under considerable pressure from the Court to bring this claim to a conclusion as it is one of the few remaining.

If you would to discuss this matter, please feel free to contact me.

Very truly yours,



James L. Thieman

X:\Files\Golden Fresh Farms\Pleadings\Misc Claim Info\Letter to Bender re De Lage.docx

dll financial solutions partner
PO BOX 824018
PHILADELPHIA, PA 19182-4018

EXHIBIT B

Full Buyout with Equipment Purchase

Quote Effective Date: December 03, 2018

To: Russ Bender
GOLDEN FRESH FARMS
ATTN KYLIE HARDEE
1902 PROGRESS DR
WAPAKONETA, OH 45895

From: Russell Adam Bender
DE LAGE LANDEN FINANCIAL SERVICES, INC.
1111 OLD EAGLE SCHOOL RD
WAYNE, PA 19087-1453

Customer Information

GOLDEN FRESH FARMS
ATTN KYLIE HARDEE
1902 PROGRESS DR
WAPAKONETA, OH 45895

Contract: 100-10135958
Account Number: 1109945
Equipment: SEE ATTACHED
Quote Number: 10350624

Per your request, the Full Buyout with Equipment Purchase payment due on the above contract is:

Remaining Payments:	$18,521.73
Less Discount:	$0.00
Equipment Price:	$0.00
Sales Tax :	$0.00
Property Tax Reimbursement:	$0.00
Outstanding Charges:	$356.04
Less Security Deposit:	$0.00
Full Buyout with Equipment Purchase Amount:	$18,877.77

This Buyout payment is due upon receipt of this invoice. Ownership to the equipment will pass upon our receipt of the Buyout amount. This Buyout quote is void if payment is not received by January 02, 2019.

Please include the lower portion of this invoice with your remittance. Your check should be made payable to DE LAGE LANDEN FINANCIAL SERVICES, INC. and mailed to PO BOX 824018 PHILADELPHIA, PA 19182-4018. If you have any questions, please call Russell Adam Bender at +1 (610) 386-5000 x1760.

Thank you for allowing us to serve you.

Keep upper portion for your records - Please return the lower part with your payment

dll financial solutions partner

Remittance Section

Quote No.	Contract Number	Due Date
10350624	100-10135958	01/02/2019
Total Due	**Amount Enclosed**	
$18,877.77	$	

GOLDEN FRESH FARMS
ATTN KYLIE HARDEE
1902 PROGRESS DR
WAPAKONETA, OH 45895

Please make check payable to
DE LAGE LANDEN FINANCIAL SERVICES, INC.
PO BOX 824018
PHILADELPHIA, PA 19182-4018

financial solutions partner
PO BOX 824018
PHILADELPHIA, PA 19182-4018

Equipment Schedule for the Full Buyout with Equipment Purchase

To:
GOLDEN FRESH FARMS
ATTN KYLIE HARDEE
1902 PROGRESS DR
WAPAKONETA, OH 45895

From:
DE LAGE LANDEN FINANCIAL SERVICES, INC.
1111 OLD EAGLE SCHOOL RD
WAYNE, PA 19087-1453

The Buyout in the amount of $18,877.77 dated December 03, 2018 for Contract Number 100-10135958 with GOLDEN FRESH FARMS only applies to the equipment listed below:

Make	Model	Serial Number
CATERPILLAR - MH	GP18N	AT34A00395

James Thieman

From: Daily, Allan <allan.daily@dinsmore.com>
Sent: Sunday, December 9, 2018 9:49 AM
To: James Thieman
Cc: Zimmerman, Robert
Subject: Re: GFF - Proof of Claim No. 18 - De Lage Landen

Jim - Our client agrees this is acceptable.

Allan R. Daily

Dinsmore & Shohl LLP
255 East Fifth Street
Suite 1900
Cincinnati, OH 45202
T (513) 977-8567
F (513) 977-8141
E allan.daily@dinsmore.com

On Dec 8, 2018, at 10:10 PM, James Thieman <jthieman@fgks-law.com> wrote:

> Please respond by Monday morning if you can. I owe a report to Judge Pepple.
>
> Get Outlook for Android

From: James Thieman
Sent: Friday, December 7, 2018 10:13:41 AM
To: rbender@leasedirect.com; Daily, Allan; Zimmerman, Robert; mscheier@kmklaw.com
Subject: GFF - Proof of Claim No. 18 - De Lage Landen

All,

I have attached a proposed Amended Recommendation that I am prepared to sign. I think it correctly states the matter. Please review it. If it is acceptable, please sign and return it promptly. Except for claims by related parties, this is the last outstanding claim.

Thanks,

Jim

JAMES L. THIEMAN

FAULKNER, GARMHAUSEN, KEISTER & SHENK
A LEGAL PROFESSIONAL ASSOCIATION
Courtview Center, Suite 300 | 100 S. Main Avenue | Sidney, Ohio 45365
Tel: 937.492.1271 | Fax: 937.498.1306
jthieman@fgks-law.com | www.fgks-law.com

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Fax Transmission

To: Mary Brautigam

Fax: 14197396768

RE: Mastronardi v. Chibante, et al.

From: FGKS Fax

Date: 12/12/2018

Pages: 12

Comments:

TO: Auglaize County Clerk of Courts

FROM: James L. Thieman (0023595)

RE: Mastronardi v. Chibante, et al.
Case No. 2017 CV 0144

Please file the attached Receiver's Amended Recommendation Regarding Proof of Claim Number 18 in the above-ref erenced case.

There are 12 pages, including this cover page.

Please advise Mary B. at (937) 492-1271 if you are having trouble receiving this document.

Mary R. Brautigam
Legal Assistant

Faulkner, Garmhausen, Keister & Shenk
A LEGAL PROFESSIONAL ASSOCIATION
Courtview Center, Suite 300 | 100 S. Main Avenue | Sidney, Ohio 45365
Tel: 937.492.1271 | Fax: 937.498.1306
mbrautigam@fgks-law.com<mailto:mbrautigam@fgks-law.com> | www.fgks-law.com<http://www.fgks-law.com/>

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X