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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DODGE THIRD JUDICIAL DISTRICT

Case Type: Foreclosure
Court File No. 20-CV-20-86

Bremer Bank, National Association,

Plaintiff,

v.

Carl Weis, Rhonda Weis, Bryant Weis, Gerken Inc., CNH Industrial Capital America LLC, Compeer Financial FLCA, Associated Milk Producers, Inc., Security State Bank of Wanamingo, John Doe, Mary Roe, ABC Partnership and XYZ Corporation,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

The above-entitled matter came before the Court on June 26, 2020 on Plaintiff's motion for summary judgment with respect to Count 2, Counts 3 (in separate part), 6 (in separate part), 8 and 9 of Plaintiff's Complaint and Counts 1 and 2 of Defendant Bryant Weis's Counter Claim[1].

APPEARANCES: Matthew J. Bialick, Esq., appeared via ZOOM and on behalf of Bremer Bank, National Association ("Plaintiff" or "Bank"). Morgan Carlson, Esq. appeared via ZOOM and with Defendant Bryant Weis ("Bryant Weis"). Gerken Inc. ("Gerken") is *pro se* and did not appear. Defendants Carl and Rhonda Weis are *pro se* and did not appear. CNH Industrial Capital America LLC ("CNH") is *pro se* and did not appear. On July 20, 2020, a judgment of dismissal was filed with regard to Plaintiff and CNH. Defendant Compeer Financial FLCA ("Compeer") did not appear. On June 22, 2020, a judgement of dismissal was filed with regard to

[1] Plaintiff also moved for summary judgment as to Counts 1, 3 (in separate part), 4, 5, and 6 (in separate part). The Court's findings of fact, conclusions of law and order for judgment pertaining to Plaintiff's summary judgment motion related to these counts was filed on July 7, 2020. The counts in this summary judgment order were not contested by the defendants.

Plaintiff and Compeer. Defendant Associated Milk Producers, Inc. ("AMPI") did not appear. On July 7, 2020, a judgement of dismissal was filed with regard to Plaintiff and AMPI. Defendant Security State Bank of Wanamingo ("SSBW") is represented by the Grinde & Dicke Law Firm. By letter filed June 25, 2020, SSBW stated that they take no position on the pending motion and would not be appearing.

The Court, having heard the evidence herein makes the following, Findings of Fact, Conclusions of Law, and Order for Judgment:

FINDINGS OF FACT

I. THE REAL PROPERTY COLLATERAL.

1. The Borrowers are the record owner of fee title to the real property commonly known as acreage located on 56841 270th Avenue, Pine Island, MN 55963 which is legally described as:

North Half (N½) of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) and the North Half (N½) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) and the South Half (S½) of the Southwest Quarter (SW¼) all in Section Twenty-six (26), Township One Hundred Eight (108) North, Range Sixteen (16) West, Except the following described property:

> Beginning at the southwest corner of the SW¼ of said Section 26, thence East along the South line of said SW¼, 1512.9 feet, thence Northerly at a deflection angle of 98°02' to the left 565.7 feet, thence Northwesterly at a deflection angle of 18°13' to the left 330.9 feet, thence Northerly at a deflection angle of 24°52' to the right 476.2 feet to the North line of the S½ SW¼, thence West along said North line 1316.9 feet to the northwest corner of the S½ SW¼, thence South along the West line of said SW¼ 1320.2 feet to the point of beginning. Being subject to an easement for township road right-of-way across the West 33 feet thereof.

AND

North Half (N½) of the Southeast Quarter (SE¼) of Section Twenty-six (26), Township One Hundred Eight (108) North, Range Sixteen (16) West, Less:

> That part of the N½ SE¼ of Section 26-108-16, shown as Parcel No. 17 on the Plat designated as Dodge County Right of Way Plat No. 3 on file and of record, containing 1.95 acres, more or less, Dodge County Right-of-Way Plat No. 3., Less:

> That part of the NE¼ SE¼ of Section 26-108-16 described as follows: Beginning at the NE comer of the SE¼ of said Section 26 , thence S, assumed bearing, along the E line of said SE¼, 556.00 feet, thence N 88°49’02” W, parallel with the N line of said SE¼, 235.00 feet, thence N, parallel with the E line of said SE¼, 556.00 feet to the N line of said SE¼, thence S 88°49'02" E, along said N line 235.00 feet to the point of beginning; Being subject to an easement for the County Road No. 22 right of way over the Nly boundary thereof and subject to an easement for the Township Road right of way over the Ely boundary thereof. Containing 3.00 acres, more or less.

All contained in the County of Dodge, State of Minnesota.

(the “Real Property”).

2. As outlined below, the Real Property serves as collateral for the below referenced Loans.

3. Other than security instruments recorded by Plaintiff, the only other encumbrance on the Real Property is a judgment obtained by Gerken, Inc. in the amount of $96,764.02 docketed on September 13, 2018.

II. THE PERSONAL PROPERTY COLLATERAL.

4. As outlined below, the personal property collateral **(the “Personal Property Collateral”)** connected to the below referenced loans and security agreements consists of:

> ... all farm products including without limitation, all (1) crops grown, growing or to be grown, including crops produced on trees, vines and bushes, and agricultural goods produced in agricultural operations (2) livestock, born or unborn, (3) supplies used or produced in farming operations and (4) products of crops or livestock in unmanufactured states; all equipment, accessions, fixtures, and general intangibles (including payment intangibles and software); instruments (including promissory notes), documents, deposits accounts, all attachments accessories, tools, parts, supplies, increase and all additions to, replacements of and substitutions for any of the property and goods, all insurance refunds on any of the foregoing property and goods; together with all products and proceeds of any of the property or goods. All records, data relating to any of the property and goods, in whatever form, and all equipment and software necessary to utilize, create, maintain and process any such records and date or electronic media.

5. As of Borrowers’ January 1, 2018 financial statement, they attested that they were the

owners of the pieces of equipment attached to Exhibit R to the Filzen Aff; all of which is included as part of the Personal Property Collateral.

6. On or about August 20, 2014, the Borrowers executed a security agreement (the August 20, 2014 Security Agreement) that granted Plaintiff a security interest in the Personal Property Collateral. Said security agreement applied to all present or future debts of the Borrowers owed to Plaintiff.

7. On or about August 20, 2014 and October 10, 2017, Plaintiff filed UCC Financing Statements with the Minnesota Secretary of State covering all Personal Property Collateral of the Borrowers (collectively as the "Financing Statement"). Such filing was made prior to the filing of any financing statements by any other secured parties and, as such, Plaintiff's security interest is superior to that held by any other potential secured parties. Such filing has been properly continued.

8. The only other encumbrances of record regarding the Personal Property Collateral relate to UCC filings made by CNH: (1) on April 2, 2015 regarding Newhol L218 Skid Steers; (2) on February 16, 2017 regarding a Newhol Box 185 Spreader; and (3) on October 4, 2017 regarding a Newhold L220 Skid Steer.

9 Plaintiff filed CNS Financing Statements covering all crops, livestock and farm products of Borrowers on October 30, 2014 and on November 21, 2014 (the "CNS Financing Statements"). The CNS Financing Statements were properly continued and are currently in full force and effect.

III. THE LOANS.

A. Loan XXXX4741.

10. On or about August 20, 2014, Plaintiff made a loan to the Borrowers in the amount of $1,000,000.00 (the "4741 Loan").

11. In connection to the 4741 Loan, the Borrowers executed and delivered to Plaintiff a promissory note in the original principal amount of 1,000,000.00 (the "4741 Note").

12. On or about August 20, 2014, Borrowers executed a mortgage in favor of Plaintiff encumbering the Real Property (the “2014 Mortgage”) in the maximum principal amount of $1,000,000.00. The 2014 Mortgage was recorded on August 20, 2014 as Document No. A 207001 with the Dodge County Recorder’s Office. The 2014 Mortgage contains a cross-collateralization clause, which allows said mortgage to function as security for all other indebtedness owed by Borrowers to Plaintiff.

13. On or about August 20, 2014, Borrowers executed an assignment of leases and rents in favor of Plaintiff encumbering the Real Property (the “Assignment”). Said Assignment was recorded on August 20, 2014 as Document No. 207002 with the Dodge County Recorder’s Office.

14. The 4741 Loan, among other things, is secured by the August 20, 2014 Security Agreement, as well as a security agreement executed by Borrowers on October 10, 2017 that encumbered the Personal Property Collateral described therein (the “October 10, 2017 Security Agreement”). The October 10, 2017 Security Agreement applied to all then owned, or thereafter acquired, property (as defined in said security agreement) of the Borrowers and it applied to all indebtedness existing at that time or at any time in the future. Since the 4741 Loan constitutes indebtedness owed by the Borrowers, the October 10, 2017 Security Agreements functions as security for the 4741 Loan.

15. The 4741 Note, along with the 2014 Mortgage, the Assignment, the August 20, 2014 Security Agreement, the October 10, 2017 Security Agreement, and along with all additional documents executed in connection thereto referred to as the "4741 Loan Documents."

16. The Borrowers defaulted under the terms of the 4741 Loan Documents by, among other things, failing to pay all amounts owed to Plaintiff at the due dates specified in the applicable instrument (collectively as the "4741 Defaults").

17. Under the 4741 Loan Documents, upon a default, the Plaintiff has the rights to: (1) accelerate all indebtedness; (2) pursue foreclosure by action of the Real Property; (3) seek a deficiency judgment against the Borrowers; (4) seek an order for claim and delivery of the collateral specified in the October 10, 2017 Security Agreement; and (5) seek all the remedies provided by law or equity. The 4741 Loan Documents specifically provide that Plaintiff can recover all costs and attorneys' fees connected with enforcing its rights under the 4741 Loan Documents.

18. On or about October 3, 2018, Plaintiff sent the Borrowers a notice of default pertaining to the 4741 Defaults and demanded payment of all past due amounts within 30 days of the date of the letter. Full payment of all past due amounts was not made by that time.

19. On or about January 10, 2019, Plaintiff sent the Borrowers notice of their right to participate in Farmer-Lender mediation. Mediation was subsequently requested by Carl Weis, but not Rhonda Weis.

20. On or about April 4, 2019, the Farmer Lender Mediation concluded without resolution.

21. On or about May 7, 2019, Plaintiff received a waiver of mediation notice pertaining to Rhonda Weis.

22. On April 9, 2019, Plaintiff sent the Borrowers a notice of acceleration in connection to the 4741 Defaults and demanded full payment of all amounts due under Loan 4741 within 30 days of the date of the letter. Said notice also advised of the Plaintiff's intent to foreclose on the 2014 Mortgage and exercise all rights under the 4741 Loan Documents. Full payment of all amounts owed under Loan 4741 was not made by that time.

23. As of May 27, 2020, the following amounts are owed under the 4741 Note: principal in the amount of $912,008.70, accrued and unpaid interest in the amount of $41,105.36, and late charges in the amount of $2,926.40 for a total amount owed of $956,040.46. (“Note 4741 Indebtedness"), plus all costs, expenses and attorneys’ fees that have accrued and will continue to accrue.

23. As of May 27, 2020, the following amounts are owed under the 4741 Note: principal in the amount of $912,008.70, accrued and unpaid interest in the amount of $41,105.36, and late charges in the amount of $2,926.40 for a total amount owed of $956,040.46. (“Note 4741 Indebtedness"), plus all costs, expenses and attorneys’ fees that have accrued and will continue to accrue.

B. Loan XXXX9054.

24. On or about October 10, 2017, Plaintiff made a loan to the Borrowers in the amount of $309,082.00 (the “9054 Loan”).

25. In connection to the 9054 Loan, the Borrowers executed and delivered to Plaintiff a promissory note dated as of October 10, 2017 in the original principal amount of $309,082.00 (the "9054 Note").

26. On or about October 10, 2017, Borrowers executed a mortgage in favor of Plaintiff encumbering the Real Property (the “2017 Mortgage” and collectively with the 2014 Mortgage as the “Mortgages”) in the maximum principal amount of $309,082.00. The 2017 Mortgage was recorded on December 7, 2017 as Document No. A 223397 with the Dodge County Recorder’s Office. The 2017 Mortgage contains a cross collateralization clause, which allows said mortgage to function as security for all other indebtedness owed by Borrowers to Plaintiff.

27. On or about October 10, 2017, the Borrowers executed the October 10, 2017 Security

Agreement. The October 10, 2017 Security Agreement functions as security for the 9054 Loan.

28. The 9054 Note, along with the 2017 Mortgage, the October 10, 2017 Security Agreement, and along with all additional documents executed in connection thereto referred to as the "9054 Loan Documents."

29. The Borrowers defaulted under the terms of the 9054 Loan Documents by, among other things, failing to pay all amounts owed to Plaintiff at the due dates specified in the applicable instrument (collectively as the “9054 Defaults”).

30. Under the 9054 Loan Documents, upon a default, the Plaintiff has the rights to: (1) accelerate all indebtedness; (2) pursue foreclosure by action of the Real Property; (3) seek a deficiency judgment against the Borrowers; (4) seek an order for claim and delivery of the collateral specified in the October 10, 2017 Security Agreement; and (5) seek all the remedies provided by law or equity. The 9054 Loan Documents specifically provide that Plaintiff can recover all costs and attorneys’ fees connected with enforcing its rights under the 9054 Loan Documents.

31. On or about October 3, 2018, Plaintiff sent the Borrowers a notice of default pertaining to the 9054 Defaults and demanded payment of all past due amounts within 30 days of the date of the letter. Full payment of all past due amounts was not made by that time.

32. On or about January 10, 2019, Plaintiff sent the Borrowers notice of their right to participate in Farmer-Lender mediation. Mediation was subsequently requested by Carl Weis, but not Rhonda Weis.

33. On or about April 4, 2019, the Farmer Lender Mediation concluded without resolution.

34. On or about May 7, 2019, Plaintiff received a waiver of mediation notice pertaining to Rhonda Weis.

35. On April 9, 2019, Plaintiff sent the Borrowers a notice of acceleration in connection to the 9054 Defaults and demanded full payment of all amounts due under Loan 9054 within 30 days of the date of the letter. Said notice also advised of the Plaintiff's intent to foreclose on the 2017 Mortgage and exercise all rights under the 9054 Loan Documents. Full payment of all amounts owed under Loan 9054 was not made by that time.

36. As of May 27, 2020, the following amounts are owed under the 9054 Note: principal in the amount of $303,576.98, accrued and unpaid interest in the amount of $13,097.45, and late charges in the amount of $955.30 of for a total amount owed of $317,629.73 ("Note 9054 indebtedness"), plus all costs, expenses and attorneys' fees that have accrued and will continue to accrue.

36. As of May 27, 2020, the following amounts are owed under the 9054 Note: principal in the amount of $303,576.98, accrued and unpaid interest in the amount of $13,097.45, and late charges in the amount of $955.30 of for a total amount owed of $317,629.73 ("Note 9054 indebtedness"), plus all costs, expenses and attorneys' fees that have accrued and will continue to accrue.

C. Loan XXXX4749.

37. On or about August 3, 2017, Plaintiff made a loan to the Borrowers in the amount of $133,552.79 (the "4749 Loan").

38. In connection to the 4749 Loan, the Borrowers executed and delivered to Plaintiff a promissory note dated as of August 3, 2017 in the original principal amount of $133,552.79 (the "4749 Note").

39. On or about August 3, 2017, the Borrowers executed a security agreement in favor of Plaintiff encumbering the Personal Property Collateral (the "August 3, 2017 Security Agreement" and collectively, with all other security agreements as the "Security

Agreements"). The August 3, 2017 Security Agreement applied to all then owned, or thereafter acquired, property of the Borrowers and it applied to all indebtedness existing at that time or at any time in the future. Since the 4749 Loan constitutes indebtedness owed by the Borrowers, the August 3, 2017 Security Agreement functions as security for the 4749 Loan.

40. The 4749 Note, along with the August 3, 2017 Security Agreement, and along with all additional documents executed in connection thereto referred to as the "4749 Loan Documents."

41. The Borrowers defaulted under the terms of the 4749 Loan Documents by, among other things, failing to pay all amounts owed to Plaintiff at the due dates specified in the applicable instrument (collectively as the "4749 Defaults").

42. Under the 4749 Loan Documents, upon a default, the Plaintiff has the rights to: (1) accelerate all indebtedness; (2) seek a deficiency judgment against the Borrowers; (3) seek an order for claim and delivery of the collateral specified in the August 3, 2017 Security Agreement; and (4) seek all the remedies provided by law or equity. The 4749 Loan Documents specifically provide that Plaintiff can recover all costs and attorneys' fees connected with enforcing its rights under the 4749 Loan Documents.

43. On or about October 3, 2018, Plaintiff sent the Borrowers a notice of default pertaining to the 4749 Defaults and demanded payment of all past due amounts within 30 days of the date of the letter. Full payment of all past due amounts was not made by that time.

44. On or about January 10, 2019, Plaintiff sent the Borrowers notice of their right to participate in Farmer-Lender mediation. Mediation was subsequently requested by Carl Weis, but not Rhonda Weis.

45. On or about April 4, 2019, the Farmer Lender Mediation concluded without resolution.

46. On or about May 7, 2019, Plaintiff received a waiver of mediation notice pertaining to Rhonda Weis.

47. On April 9, 2019, Plaintiff sent the Borrowers a notice of acceleration in connection to the 4749 Defaults and demanded full payment of all amounts due under Loan 4749 within 30 days of the date of the letter. Said notice also advised of the Plaintiff's intent to exercise all rights under the 4749 Loan Documents. Full payment of all amounts owed under Loan 4749 was not made by that time.

48. As of May 27, 2020, the following amounts are owed under the 4749 Note: principal in the amount of $71,892.21, accrued and unpaid interest in the amount of $2,964.37 and late fees of $650.25 for a total amount owed of $75,506.83 ("Loan 4749 Indebtedness"), plus all costs, expenses and attorneys' fees that have accrued and will continue to accrue.

D. Loan XXXX6698.

49. On or about August 3, 2017, Plaintiff made a loan to the Borrowers in the amount of $75,261.92 (the "6698 Loan").

50. In connection to the 6698 Loan, the Borrowers executed and delivered to Plaintiff a promissory note dated as of August 3, 2017 in the original principal amount of $75,261.92 (the "6698 Note").

51. On or about August 3, 2017, the Borrowers executed the August 3, 2017 Security Agreement. The August 3, 2017 Security Agreement applied to all then owned, or thereafter acquired, property of the Borrowers and it applied to all indebtedness existing at that time or at any time in the future. Since the 6698 Loan constitutes indebtedness owed by the Borrowers, the August 3, 2017 Security Agreement functions as security for the 6698 Loan.

52. The 6698 Note, along with the August 3, 2017 Security Agreement, and along with all

additional documents executed in connection thereto referred to as the "6698 Loan Documents."

53. The Borrowers defaulted under the terms of the 6698 Loan Documents by, among other things, failing to pay all amounts owed to Plaintiff at the due dates specified in the applicable instrument (collectively as the “6698 Defaults”).

54. Under the 6698 Loan Documents, upon a default, the Plaintiff has the rights to: (1) accelerate all indebtedness; (2) seek a deficiency judgment against the Borrowers; (3) seek an order for claim and delivery of the collateral specified in the August 3, 2017 Security Agreement; and (4) seek all the remedies provided by law or equity. The 6698 Loan Documents specifically provide that Plaintiff can recover all costs and attorneys’ fees connected with enforcing its rights under the 6698 Loan Documents.

55. On or about October 3, 2018, Plaintiff sent the Borrowers a notice of default pertaining to the 6698 Defaults and demanded payment of all past due amounts within 30 days of the date of the letter. Full payment of all past due amounts was not made by that time.

56. On or about January 10, 2019, Plaintiff sent the Borrowers notice of their right to participate in Farmer-Lender mediation. Mediation was subsequently requested by Carl Weis, but not Rhonda Weis.

57. On or about April 4, 2019, the Farmer Lender Mediation concluded without resolution.

58. On or about May 7, 2019, Plaintiff received a waiver of mediation notice pertaining to Rhonda Weis.

59. On April 9, 2019, Plaintiff sent the Borrowers a notice of acceleration in connection to the 6698 Defaults and demanded full payment of all amounts due under Loan 6698 within 30 days of the date of the letter. Said notice also advised of the Plaintiff’s intent to exercise all rights under the 6698 Loan Documents. Full payment of all amounts owed under Loan

6698 was not made by that time.

60. As of May 27, 2020, the following amounts are owed under the 6698 Note: principal in the amount of $56,515.60, accrued and unpaid interest in the amount of $2,093.84 and late fees of $658.08, for a total amount owed of $59,267.52 (the “6698 indebtedness"), plus all costs, expenses and attorneys’ fees that have accrued and will continue to accrue.

E. Loan XXXX9051.

61. On or about October 10, 2017, Plaintiff made a loan to the Borrowers in the amount of $220,000.00 (the “9051 Loan”).

62. In connection to the 9051 Loan, the Borrowers executed and delivered to Plaintiff a promissory note dated as of October 10, 2017 in the original principal amount of $220,000.00 (the "9051 Note").

63. On or about October 10, 2017, the Borrowers executed the October 10, 2017 Security Agreement. The October 10, 2017 Security Agreement applied to all then owned, or thereafter acquired, property of the Borrowers and it applied to all indebtedness existing at that time or at any time in the future. Since the 9051 Loan constitutes indebtedness owed by the Borrowers, the October 10, 2017 Security Agreement functions as security for the 9051 Loan.

64. The 9051 Note, along with the October 10, 2017 Security Agreement, and along with all additional documents executed in connection thereto referred to as the "9051 Loan Documents."

65. The Borrowers defaulted under the terms of the 9051 Loan Documents by, among other things, failing to pay all amounts owed to Plaintiff at the due dates specified in the applicable instrument (collectively as the “9051 Defaults”).

66. Under the 9051 Loan Documents, upon a default, the Plaintiff has the rights to: (1)

accelerate all indebtedness; (2) seek a deficiency judgment against the Borrowers; (3) seek an order for claim and delivery of the collateral specified in the October 10, 2017 Security Agreement; and (4) seek all the remedies provided by law or equity. The 9051 Loan Documents specifically provide that Plaintiff can recover all costs and attorneys' fees connected with enforcing its rights under the 9051 Loan Documents.

67. On or about October 3, 2018, Plaintiff sent the Borrowers a notice of default pertaining to the 9051 Defaults and demanded payment of all past due amounts within 30 days of the date of the letter. Full payment of all past due amounts was not made by that time.

68. On or about January 10, 2019, Plaintiff sent the Borrowers notice of their right to participate in Farmer-Lender mediation. Mediation was subsequently requested by Carl Weis, but not Rhonda Weis.

69. On or about April 4, 2019, the Farmer Lender Mediation concluded without resolution.

70. On or about May 7, 2019, Plaintiff received a waiver of mediation notice pertaining to Rhonda Weis.

71. On April 9, 2019, Plaintiff sent the Borrowers a notice of acceleration in connection to the 9051 Defaults and demanded full payment of all amounts due under Loan 9051 within 30 days of the date of the letter. Said notice also advised of the Plaintiff's intent to exercise all rights under the 9051 Loan Documents. Full payment of all amounts owed under Loan 9051 was not made by that time.

72. As of May 27, 2020, the following amounts are owed under the 9051 Note: principal in the amount of $191,295.57, accrued and unpaid interest of $7,217.12 and late fees of $1,159.40 for a total amount owed of $199,672.09 (the "9051 Indebtedness"), plus all costs, expenses and attorneys' fees that have accrued and will continue to accrue

F. Loan XXXX0016.

73. On or about January 31, 2018, Plaintiff made a loan to the Borrowers in the amount of $30,000.00 (the "0016 Loan").

74. In connection to the 0016 Loan, the Borrowers executed and delivered to Plaintiff a promissory note dated as of January 31, 2018 in the original principal amount of $30,000.00 (the "0016 Note").

75. On or about January 31, 2018, the Borrowers executed a security agreement in favor of Plaintiff encumbering the Personal Property Collateral (the "January 31, 2018 Security Agreement"). The January 31, 2018 Security Agreement applied to all then owned, or thereafter acquired, property (as defined in the January 31, 2018 Security Agreement) of the Borrowers and it applied to all indebtedness existing at that time or at any time in the future. Since the 0016 Loan constitutes indebtedness owed by the Borrowers, the January 31, 2018 Security Agreement functions as security for the 0016 Loan.

76. The 0016 Note, along with the January 31, 2018 Security Agreement, and along with all additional documents executed in connection thereto referred to as the "0016 Loan Documents."

77. The Borrowers defaulted under the terms of the 0016 Loan Documents by, among other things, failing to pay all amounts owed to Plaintiff at the due dates specified in the applicable instrument (collectively as the "0016 Defaults").

78. Under the 0016 Loan Documents, upon a default, the Plaintiff has the rights to: (1) accelerate all indebtedness; (2) seek a deficiency judgment against the Borrowers; (3) seek an order for claim and delivery of the collateral specified in the January 31, 2018 Security Agreement; and (4) seek all the remedies provided by law or equity. The 0016 Loan Documents specifically provide that Plaintiff can recover all costs and attorneys' fees connected with enforcing its rights under the 0016 Loan Documents.

79. On or about October 3, 2018, Plaintiff sent the Borrowers a notice of default pertaining to the 0016 Defaults and demanded payment of all past due amounts within 30 days of the date of the letter. Full payment of all past due amounts was not made by that time.

80. On or about January 10, 2019, Plaintiff sent the Borrowers notice of their right to participate in Farmer-Lender mediation. Mediation was subsequently requested by Carl Weis, but not Rhonda Weis.

81. On or about April 4, 2019, the Farmer Lender Mediation concluded without resolution.

82. On or about May 7, 2019, Plaintiff received a waiver of mediation notice pertaining to Rhonda Weis.

83. On April 9, 2019, Plaintiff sent the Borrowers a notice of acceleration in connection to the 0016 Defaults and demanded full payment of all amounts due under Loan 0016 within 30 days of the date of the letter. Said notice also advised of the Plaintiff's intent to exercise all rights under the 0016 Loan Documents. Full payment of all amounts owed under Loan 0016 was not made by that time.

84. As of May 27, 2020, the following amounts are owed under the 0016 Note: principal in the amount of $28,701.21, and accrued and unpaid interest of $2,453.36 for a total amount owed of $31,154.57 (the "0016 Indebtedness"), plus all costs, expenses and attorneys' fees that have accrued and will continue to accrue.

IV. FRAUDULENT TRANSFER OF MILK PROCEEDS FROM BORROWERS TO BRYANT WEIS.

85. Bryant Weis is the son of the Borrowers.

86. Bryant Weis lives on the Real Property and helps the Borrowers with their cattle farming operation.

87. Borrowers have compensated Bryant Weis for his assistance through paying him as a

"custom hire" farm hand, with annual payments from 2016-2018 being well in excess of $100,000 per year.

88. Prior to July 31, 2018, payments to Bryant for his custom hire farm work were made through a 15% assignment of gross milk proceeds that Carl Weis had on file with AMPI.

A. 2016 Financials for Borrowers and Bryant Weis.

89. In 2016, Borrowers reported $940,330 in milk sales on Schedule F to their income tax return. The Borrowers also reported $173,353 in custom hire farm expenses and $294,414 in expenses for animal fees.

90. In 2016, Bryant Weis reported $0 in milk sales on Schedule F to his income tax return. Bryant Weis did, however, report $139,536 in custom hire farm income. Bryant Weis reported $0 in expenses related to animal feed.

B. 2017 Financials for Borrowers and Bryant Weis.

91. In 2017, Borrowers reported $991,550 in milk sales on Schedule F to their income tax return. The Borrowers also reported $199,666 in custom hire farm expenses and $359,461 in expenses for animal fees.

92. The AMPI Producer Information Year-to-Date Financial History Summary for Carl Weis shows that in 2017 Carl Weis sold a gross amount of $979,901.20 in milk to AMPI. All of said amounts were direct deposited into a bank account the Borrowers maintained with Plaintiff.

93. In 2017, Bryant Weis reported $0 in milk sales on Schedule F to his income tax return. Bryant Weis did, however, report $147,910 in custom hire farm income. Bryant Weis reported $0 in expenses related to animal feed.

94. The AMPI Producer Information Year-to-Date Financial History Summary for Bryant Weis shows that Bryant Weis had no milk sales to AMPI in 2017. *See* Exhibit E to Bialick

Aff.

C. 2018 Financials for Borrower and Bryant Weis.

95. Borrowers have refused to provide their 2018 income tax returns.

96. The AMPI Producer Information Year-to-Date Financial History Summary for Carl Weis shows that in 2018 Carl Weis sold a gross amount of $898,330.47 in milk to AMPI, which amounts to a gross amount of $74,860.87 per month. Of that $898,330.47 figure, $349,025.72 was attributable to August 15, 2018 through December of 2018.

97. In 2018, Bryant Weis reported $0 in milk sales on Schedule F to his income tax return. Bryant Weis did, however, report $261,416 in custom hire farm income. Bryant Weis, for the first time in 2018, reported $132,197 in expenses related to animal feed.

98. The AMPI Producer Information Year-to-Date Financial History Summary for Bryant Weis shows that Bryant Weis had no milk sales to AMPI in 2018.

D. 2018 Events Involving Borrowers and Bryant Weis.

99. From January through early August of 2018, AMPI paid a series of milk checks to the Borrowers without listing Plaintiff as a co-payee as AMPI was required to do, pursuant to the Food Security Act of 1985 and Minnesota Statutes Chapter 336A, in order to obtain clean title to the milk. The practical effect of this failure by AMPI, at that time, was largely mitigated given that all sale proceeds were deposited into a bank account that Borrowers maintained with Plaintiff.

100. On July 1, 2018, Borrowers committed their first monetary default when they failed to pay off Loan 0016 at its maturity date. No loan payments have been made by Borrowers since this initial payment default, and no commodities proceeds have been remitted to Plaintiff by Borrowers since the default occurred.

101. On July 17, 2018, Borrowers executed a series of assignments of dairy proceeds in favor

of Plaintiff, pertaining to AMPI, in the aggregate amount of $12,595.73 per month (the "Milk Assignments"). AMPI made the assignment payments to Plaintiff through the end of 2018.

102. On August 9, 2018, Carl Weis submitted a form to AMPI directing that AMPI terminate all direct deposits into the bank account Borrowers maintained with Plaintiff. AMPI honored said form and it stopped direct depositing milk proceeds into the bank account Borrowers maintained with Plaintiff. Despite cutting off all of Plaintiff's access to the milk proceeds through this action, AMPI did not start listing Plaintiff as a co-payee on any future milk checks.

103. On August 13, 2018, Carl Weis submitted a form to AMPI directing AMPI to increase the assignment of milk payments to Bryant from 15% of the gross amount sold to 50% of the gross amount sold, with said change being effective August 1, 2018 (but still governing the July 31, 2018 milk payment from AMPI).

104. On October 25, 2018, Carl Weis declared bankruptcy. AMPI was specifically notified, in writing, of this bankruptcy on October 31, 2018.

E. 2019 Events Involving Borrowers and Bryant Weis.

105. On January 17, 2019, Carl Weis and Bryant Weis submitted a signed Member Information Change Form to AMPI, whereby Carl and Bryant represented that "Carl sold cows to son Bryant" and they directed AMPI to make all future payments to Bryant instead of Carl. Despite this purported "sale" no sale proceeds were remitted to Plaintiff.

106. AMPI internal records indicate that "[t]he cows were moved to Bryant's name in 01-19. That was Carl's idea thinking he wouldn't have to pay Bremer the assignments then. This was in name only. Bryant did not have new farm, it was the same everything."

107. After the submission of the Member Information Change Form, AMPI stopped paying

Plaintiff on the Milk Assignments.

108. On March 5, 2019, Plaintiff sent a letter to AMPI – which AMPI acknowledged that it received – informing AMPI that it had recently come to Plaintiff's attention that Carl had directed AMPI to start making payments to Bryant in an attempt to defeat Plaintiff's interest in the milk proceeds. In the letter, Plaintiff reiterated to AMPI that it had signed Milk Assignments and that it had filed both a UCC and CNS financing statement over Plaintiff's milk, and that AMPI's failure to recognize these filings constituted conversion of Plaintiff's collateral. Plaintiff then demanded that AMPI remit all wrongfully diverted milk payments to Plaintiff and that it make all milk checks out to Plaintiff going forward.

109. AMPI responded to the letter by making all Milk Assignment payments that had been missed and by making all future assignment payments in the amount of $12,595.73 per month. AMPI did not, however, remit the full amount of the milk payments that had been made from August 15, 2018 through March 1, 2019, and it did not start listing Plaintiff as a co-payee on future milk checks.

110. The AMPI Producer Information Year-to-Date Financial History Summaries show that AMPI purchased a gross amount of $556,926.75 from the Weis farming operation from January through July of 2019, which amounts to $79,560.96 per month. No further milk sales were made by either Borrowers or Bryant Weis to AMPI from August of 2019 forward.

111. In internal correspondence dated September 26, 2019, AMPI acknowledged that if future milk payments are made to Bryant, "Bremer will find out and we'll have to comply or risk making the payments ourselves."

112. On October 9, 2019, Plaintiff sent a written demand for AMPI to remit all wrongfully diverted milk payments to Plaintiff.

F. Summary of Damages Related to Milk Sales.

113. At Carl and Bryant Weis's direction, from July 31, 2018, through July, 31, 2019 Bryant Weis received a grand total of $647,532.86 from AMPI, comprised of 2018 assignment payments in the amount of $215,648.30, and a net payment total of $431,884.56 for milk sold in 2019. Had Carl Weis simply left Bryant Weis's assignment total at 15%, as it was prior to July 31, 2018, Bryant Weis would have received only $148,233.50 over this same time frame. As such, due to the changes in AMPI payments that started within a month after Carl Weis's monetary default with Plaintiff, Carl Weis transferred Bryant Weis a total of $499,309.36 more in milk proceeds than Bryant Weis would have received under the original 15% arrangement.

114. Account records obtained from SSBW confirm that monthly payments from AMPI were being direct deposited into Bryant Weis's account in 2019.

V. EVENTS INVOLVING LIQUIDATED CATTLE.

115. On June 3, 2019, Borrowers, through their legal counsel, informed Plaintiff that he would be liquidating a number of cows subject to Plaintiff's security interest through "Zumbrota."

116. On June 5, 2019, Plaintiff, through its legal counsel, informed Borrowers' counsel that it would not authorize a sale of any collateral prior to the execution of a valid collateral relinquishment agreement to document the transfer of collateral to Plaintiff.

117. On June 6, 2019, Carl Weis, through his legal counsel informed Plaintiff that he would be liquidating a number of cows subject to Plaintiff's security interest through a special livestock auction in Zumbrota Minnesota, held by Central Livestock.

118. Later in the day on June 6, 2019, Plaintiff, through its legal counsel, again reiterated that it would not consent to the sale of the cows prior to the execution of a valid collateral relinquishment agreement and he informed Borrowers' counsel that a sale of the cows

without the bank's consent would constitute conversion of Plaintiff's interest in the cows.

119. On June 11, 2019, Borrowers sold 152 cows subject to Plaintiff's security interest through a sale at Central Livestock (the "Liquidated Cows"). The sale yielded net proceeds of $103,997.49.

120. On June 21, 2019, Plaintiff demanded that the liquidation proceeds be remitted by Borrowers.

121. On June 24, 2019, legal counsel for the Borrowers, and Bryant Weis, responded that his clients had the check, but that they would not be remitting the payment to Plaintiff until the parties agreed upon what percentage of the proceeds would go to Bryant Weis in connection with a "feeder's lien" Bryant Weis was asserting with respect to the Liquidated Cows. Notwithstanding this contention, Bryant Weis did not: (1) explain what services were provided with respect to the Liquidated Cows; (2) provide evidence that the Borrowers were invoiced for said services; (3) provide evidence that said services were provided in the ordinary course of business; (4) provide evidence that any lien notification statements were sent to Plaintiff, or (5) provide evidence that he perfected his purported feeder's lien through the filing of a UCC financing statement. To date, despite repeated demands and discovery requests, Bryant Weis has failed to provide this information.

122. On June 24, 2019, Plaintiff reiterated to Borrowers that the collateral liquidation was unauthorized and it demanded full payment of all liquidation proceeds. Borrowers failed to remit any payment to Plaintiff.

VI. BANKRUPTCIES.

123. On October 25, 2018, Carl Weis filed Chapter 7 Bankruptcy. Rhonda Weis did not file bankruptcy at that time.

124. On January 2, 2019, Plaintiff obtained an order lifting the stay of bankruptcy in Carl's

bankruptcy as to the Real Property and the Personal Property Collateral.

125. On June 13, 2019, Rhonda Weis declared bankruptcy.

126. On October 8, 2019, Plaintiff obtained an order lifting the stay of bankruptcy in Rhonda's bankruptcy as to the Real Property and the Personal Property Collateral.

VII. ATTORNEYS' FEES.

127. As of April 30, 2020, Plaintiff has incurred $88,082.40 in attorneys' fees and out-of-pocket costs, disbursements, and other legal expenses in connection with enforcing its rights under the loan documents. Plaintiff has and will continue to accrue attorneys' fees and out-of-pocket costs, disbursements, and other legal expenses in connection with enforcing its rights under the loan documents.

CONCLUSIONS OF LAW

I. FRAUDULENT TRANSFER OF MILK PROCEEDS.

1. The Minnesota Uniform Voidable Transactions Act purpose is aligned with that of Minnesota's predecessor laws—to prevent debtors from placing property that is otherwise available for the payment of their debts out of the reach of their creditors. *Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55 (Minn. 2014) *citing Kummet v. Thielen,* 298 N.W. 245, 247 (Minn. 1941).

2. Under the Minnesota Voidable Transactions Act ("MUVTA"), a creditor can obtain a judgment against the recipient of a transfer that was made for no consideration, at a time when the transferor was insolvent. Minnesota Statutes Sections 513.45(a) and 513.48(b)(1)(i).

3. Under MUVTA, a creditor can also obtain a judgment against the recipient of a transfer that was made with actual intent to hinder or delay the collection efforts of the creditor. Minnesota Statutes Sections 513.44(a)(1) and 513.48(b)(1)(i).

4. In the case at bar, all of these provisions were violated when Carl Weis directed AMPI to: (1) increase the portion of milk proceeds assigned to Bryant Weis from 15% to 50% effective as of August 1, 2018 (a mere month after Borrowers' first monetary default with Plaintiff); and (2) pay all milk proceeds to Bryant Weis beginning in January of 2019 (while Carl Weis was in bankruptcy).

5. There was no legitimate purpose for this transfer of additional funds. Said transfer of funds occurred while Carl Weis was insolvent, for no consideration, and for the purpose of hindering and delaying the legitimate collection efforts of Plaintiff. While said payments were funneled through AMPI, the end result was the same – the milk proceeds were fraudulently transferred from Carl Weis to Bryant Weis.

6. Under the Minnesota Uniform Voidable Transactions act, these transfers are voidable, and Plaintiff is entitled to judgment against Bryant Weis in the amount of $499,309.36.

II. DECLARATORY JUDGMENT AND ORDER FOR CLAIM AND DELIVER REGARDING LIQUIDATED CATTLE PROCEEDS.

7. Plaintiff had a valid lien on the 152 Liquidated Cows when they were sold in June of 2019. By virtue of said lien, Plaintiff is entitled to all sale proceeds from the Liquidated Cows.

8. Bryant Weis does not have a valid statutory agricultural lien over the proceeds of the Liquidated Cows. Weis' counsel at the hearing argued whether a valid feeder's lien must be filed through the Central Notification System or the Central Filing System. After exhaustive research on the issue the Court was unable to come to any conclusion regarding the proper filing procedure. Both filing systems are under the UCC and both systems will give notice to creditors. However, the difference between filing systems is ultimately irrelevant in this case because Bryant Weis failed to provide any evidence that: (1) he is

owed any amounts by Borrowers; (2) that a valid feeder lien exists in either filing system. There is no support in the current record that Bryant Weis holds a valid feeder's lien.

9. Plaintiff is entitled to a declaratory judgment and an order for claim and delivery regarding the Liquidated Cow proceeds.

IV. BRYANT WEIS CONVERSION CLAIM.

10. Under Minnesota law, conversion is "an act of willful interference with the personal property of another, done, without lawful justification, by which any person entitled thereto is deprived of use and possession," *Christensen v. Milbank Ins. Co.*, 658 N.W.2d 580, 585 (Minn. 2003) (quotation omitted).

11. Bryant Weis's conversion claim fails because: (1) Bryant Weis has no damages; (2) Bryant Weis cannot show an entitlement to the Milk Assignment payments received by Plaintiff that form the basis of Bryant Weis's conversion claim; and (3) Plaintiff did not act to willfully interfere with the property of another – it merely enforced its legitimate security interest and Milk Assignments.

In summary, and in regard to each count in the Complaint and the Bryant Weis Counter Claims:

A. <u>Count One</u>: This count was not contested by the parties and summary judgement in favor of Plaintiff was granted pursuant to the Court Order filed July 7, 2020.

B. <u>Count Two</u>: The Court finds that there is no issue of genuine material fact regarding the transferred cattle. Defendant, Bryant Weis, failed to produce legal, valid documentation to authenticate the transfer of the cattle into his possession. Bryant Weis's denial was general and lacked sufficient specification to create an issue of genuine material fact. The Court finds that Plaintiff's security interest in the transferred cows continues notwithstanding the fraudulent transfer of such cows in 2018 to Defendant, Bryant Weis.

C. <u>Count Three</u>: This Count regarding priority of claims was not contested by any party, except Bryant Weis, and as to the other parties, summary judgment in favor of Plaintiff was granted pursuant to the Court Order filed July 7, 2020.

Defendant, Bryant Weis, failed to produce any evidence establishing a valid security interest granting him priority over Plaintiff's interest regarding the transferred cattle.

Bryant Weis alleged that he had a valid feeder lien on the liquidated cattle. However, Bryant Weis failed to produce a single document to demonstrate that a valid lien exists. Bryant Weis's denial was general and lacked specificity to create an issue of genuine material fact. As such, the Court finds that Plaintiff's interest in the liquidated cattle is senior to any other party in this action, to include an alleged feeder's lien claimed by Bryant Weis.

In addition to Defendant, Bryant Weis failed to show that he acquired the unremitted milk proceeds through any legitimate means. Again, Bryant Weis provided general denials without specificity and without evidentiary support in the record. The Court finds that Bryant Weis received milk proceeds for which Plaintiff was entitled.

D. <u>Count Four</u>: This count related to the foreclosure of the 2014 mortgage was not contested by the parties and summary judgement in favor of Plaintiff was granted pursuant to the Court Order filed July 7, 2020.

E. <u>Count Five</u>: This count related to the foreclosure of the 2017 mortgage was not contested by the parties and summary judgement in favor of Plaintiff was granted pursuant to the Court Order filed July 7, 2020. .

F. <u>Count: Six</u>: As a result of Borrower's undisputed breach, and due to Defendant Bryant Weis's failure to provide any evidence of a valid secured interest in the assets, Plaintiff is entitled to claim and delivery of the collateral property covered pursuant to Minn. Stat. Chapter 565. Such property specifically includes: all the transferred cattle, proceeds from the liquidated cattle, and milk proceeds fraudulently collected by Bryant Weis.

G. <u>Count Seven</u>: Bryant Weis failed to produce any supporting evidence that the transferred cattle were legally transferred into his possession. Bryant Weis made a general claim that he owns the transferred cattle. He was unable to provide credible testimony regarding the transferred cattle and provided no documentation to authenticate his claim. The Court finds that the transfer of cattle violated the Minnesota Uniform Voidable Transactions Act (Minn. Stat. 513.41 et. Seq.). Plaintiff is entitled to judgement against Bryant Weis for their claimed damages.

H. <u>Count Eight</u>: The Court finds that Borrowers transferred unremitted milk proceeds to Bryant Weis for no consideration. Despite Bryant Weis general claims that he is entitled to the milk proceeds, his claims are vague and without merit. Bryant Weis provided no credible testimony and failed to provide any documentation to corroborate his claim. There are no genuine issues of material fact as to this count. The Court finds that Bryant Weis collected $720,000 in milk proceeds in violation of the Minnesota Uniform Voidable Transactions Act (Minn. Stat. 513.41 et. Seq.). Plaintiff is entitled to judgement against Bryant Weis for their claimed damages.

I. Count Nine: The parties settled their claims and a dismissal between Plaintiff and AMPI was filed on July 6, 2020.

J. Weis Counter Claim One: Defendant, Bryant Weis, argued that Plaintiff collected assignments from his cattle. Defendant's claims were general and nonspecific. Furthermore, Defendant failed to provide a single document which would corroborate his claim.

K. Weis Counter Claim Two: Defendant, Bryant Weis, argued that he holds a feeder lien on the disputed cattle. Bryant Weis failed to provide a single document which would support this claim.

Based upon all the files, records and proceedings herein;

IT IS HEREBY ORDERED:

1. That Plaintiff's motion for summary judgment is **GRANTED**.

2. That Defendant Bryant Weis's Counter Claims are **DISMISSED**.

3. That all Defendants' interest in the proceeds from the liquidated cows is inferior and subordinate to Plaintiff Bank's interest and perfected lien on the liquidated cows. Plaintiff shall be entitled to an order of claim and delivery regarding the sale proceeds of said liquidated cows and Defendants shall take all steps necessary to fully cooperate with this Order and ensure that Plaintiff Bank receives all proceeds from the liquidated cows.

4. That Plaintiff Bank is entitled to all sale proceeds regarding the liquidated cows.

5. That Plaintiff Bank is entitled to damages against Bryant Weis in the amount of $499,309.36.

6. That Plaintiff Bank is entitled to its attorneys' fees and out-of-pocket costs, disbursements, and other legal expenses in connection with enforcing its rights under the loan documents.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT:

Williamson, Jodi
2020.08.04
09:21:25 -05'00'

Jodi L. Williamson
Judge of the District Court

Assistance with legal research and writing provided by Judicial Law Clerk, Ryan Peterson.

JUDGMENT AND DECREE

I certify that the above Conclusions of Law constitute the Order and Judgment of the Court.

Judgment and Order for Judgment entered this ____________ day of August, 2020.

Lea Hall
Court Administrator

Merchlewitz, Tammy
2020.08.04 11:52:41
-05'00'

Deputy Clerk