

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION**

IN RE:)	
)	Chapter 11
FARMLAND INDUSTRIES, INC. et al.,)	Case No. 02-50557
)	Joint Administration

MOTION FOR RELIEF FROM AUTOMATIC STAY

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Black & Veatch Pritchard, Inc. ("BVPI") a creditor in the above proceeding, by and through its undersigned attorneys, respectfully moves this Court for an order granting it relief from the automatic stay to continue the prosecution of an arbitration proceeding pending before the American Arbitration Association in Kansas City, Missouri, and for such other and further relief as the court deems proper. In support of its motion, BVPI states:

FACTS

1. On December 11, 1997, BVPI entered into a Lump Sum Agreement for the Coffeyville Gasification Plant (the "Gasification Agreement") with Farmland Industries, Inc. ("Farmland" or the "Debtor").

2. Under the Gasification Agreement, BVPI performed engineering, design, procurement and construction services for the construction of a gasification plant in Coffeyville, Kansas for Farmland.

3. On December 11, 1997, BVPI entered into a Lump Sum Agreement for the Coffeyville Ammonia Synthesis Loop Project (the "Synloop Agreement") with Farmland.

4. Under the Synloop Agreement, BVPI performed engineering, design, procurement, and construction services for the construction of an ammonia synthesis loop facility in Coffeyville, Kansas for Farmland.

5. The Gasification Agreement and the Synloop Agreement (collectively, the "Contracts") were subsequently amended by an addendum thereto on December 7, 2001 (the "Addendum").

6. The Addendum was expressly entered into by BVPI and Farmland to provide a more comprehensive and more acceptable means of resolving a dispute (the "Dispute") that had arisen between the parties under and relating to the Contracts.

7. The Contracts as Amended by the Addendum provided for non-binding mediation of the Dispute and procedures for initiating arbitration under construction industry arbitration rules if the mediation failed to resolve the Dispute.

8. The mediation concluded unsuccessfully on December 18, 2001 and both BVPI and Farmland pursuant to Article 22 of the Gasification Agreement, Article 22 of the Synloop Agreement and the Addendum filed demands for arbitration with the American Arbitration Association ("AAA") in Kansas City, Missouri on December 19, 2001.

9. The Arbitration proceeding, Arbitration No. 57 Y 110 00164 01 (the "Arbitration") pending before the AAA Complex Construction Panel was commenced on December 19, 2001 by the filing of said demands.

10. BVPI and Farmland have designated arbitrators, the parties approved a neutral arbitrator, and Arbitration pursuant to the Contracts was proceeding prior to Farmland's filing its Chapter 11 case on May 31, 2002.

GROUND FOR RELIEF FROM STAY

Farmland's filing of its Chapter 11 petition on May 5, 2002 stayed the prosecution of the Arbitration. BVPI's demand in the Arbitration seeks to establish that BVPI is entitled to an upward, pre-petition adjustment in excess of \$28.5 million on the Contracts and an adjustment to the Contracts' schedules by 142 days. Farmland has filed claims against BVPI in the Arbitration alleging its entitlement to delay damages, breach of warranty damages and claims for additional insurance premiums, all of which claims BVPI denies. "[A] petition filed under section 301, ... of this title, operates as a stay, applicable to all entities, of (1) the ... continuation, ... of a judicial, administrative, or other action or proceeding against the debtor ... to recover a claim against the debtor before the commencement of a case under this title." 11 U.S.C. § 362 (a)(1). The stay of the continuation of the Arbitration may, however, be terminated, modified, annulled or conditioned upon the request of a party "for cause, including the lack of adequate protection of an interest in property of such party in interest;". 11 U.S.C. § 362 (d) (1).

BVPI has "cause" for termination of the stay to prosecute its claim against Farmland in the Arbitration.

1. Cause exists for termination of the stay since the Contracts contain a bargained for, binding, enforceable mandatory arbitration provision. The Contracts provide, in part, in ARTICLE 22-Disputes, subparagraph 22.1 (a) and (c) (as modified by the Addendum) with respect to Disputes not resolved through other provision of the Contracts or Addendum that:

(a) All claim, disputes, questions and controversies arising out of or related to this Agreement, or breach thereof, including the interpretation of any provision of this Agreement

(c) shall be settled by arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then in effect, except as such rules may be modified by this Agreement or the mutual consent of the parties to the arbitration proceedings. The award rendered with respect to the arbitration proceedings shall be final and binding upon all parties to the arbitration proceedings. Judgment thereon may be entered by any court having jurisdiction.

Clearly, arbitration is required to be used to establish the validity and the amount of claims and counter-claims between the parties under these Contracts. Moreover, “Contracts containing written arbitration agreements are governed by the Federal Arbitration Act, which provides that such agreements ‘shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.’ 9 U.S.C § 2.” *Slipped Disc, Inc. v. CD Warehouse, Inc.*, 245, B.R. 342, 344 (Bankr. N.D.IA, 2000). Unless an underlying purpose of the Bankruptcy Code would be adversely affected by enforcing the arbitration clause, the arbitration clause should be enforced. *Id.* at 345, *Citing, Hays and Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1161 (3rd Cir. 1989). The underlying purpose of the Bankruptcy Code will not be adversely affected by the Arbitration and the parties should be permitted to proceed before the arbitration panel selected prior to the Chapter 11 filing.

2. Secondly, the issues to be arbitrated do not involve substantive bankruptcy rights rather they involve “none-core” construction contract disputes that are likely to be more readily and expeditiously resolved before a panel of arbitrators with substantial expertise and knowledge in the areas of construction contracts, land use, energy and environmental laws impacted by and under the Contracts. Where the issues to be arbitrated do not implicate the right to bankruptcy, the right to a discharge, or some other substantive right created in the Bankruptcy Code, **the issues are non-core and suitable for arbitration** (emphasis added), even if they arise in a § 157(b)

core proceeding. *Slipped Disc, Inc. v. CD Warehouse, Inc.*, 245, B.R. 342, 345, citing, *In re: Gurga*, 176 B.R. 196, 196, 199 (B.A. P. 9th Cir. 1994). In the instant case, the issues are purely claims based upon the Contracts and do not involve issues of substantive bankruptcy law. Accordingly, the Arbitration should be permitted to proceed.

Further, while the Bankruptcy Code does not define “cause” by providing a definitive listing of what constitutes “cause” Congress in the legislative history did suggest that “two additional bases for a determination of cause are ‘a desire to permit an action to proceed in another tribunal’ and ‘lack of any connection with or interference with the pending bankruptcy case....’ H.R. No. 95-595, 95th Cong., 1st Sess. 343-4 (1977); cf. S. Rep. No. 95-989, 95 Cong., 2d Sess. 52-3 (1978).” *Farmhand, Inc. v. Lahman Manufacturing Company, Inc.*, 31 B.R. 195, 198 (Bankr. S.D. 1983. Both of these bases are applicable to the instant case. Both Farmland and BVPI moved to resolve their respective claims, the Dispute, by arbitration before the Chapter 11 filing, this Court in accommodating the legitimate policies of the Bankruptcy Code and the Arbitration Act should enforce the bargained for arbitration clause in Farmland and BVPI’s contractual dealings. *In re: Chorus Data Systems, Inc.*, 122 B.R. 845, 855 (Bankr. NH 1990). Accordingly, BVPI is entitled to relief from the automatic stay to continue the Arbitration.

WHEREFORE, BVPI prays that the Court grant it relief from the stay and enter an order compelling the resolution of the claims and counter-claims asserted in the Arbitration be arbitrated before the AAA Construction Panel in Arbitration No. 57 Y 110

00164 01, and that it grant BVPI such other and further relief deemed necessary and proper to further the resolution of this Arbitration.

Respectfully submitted,

DANIELS & KAPLAN, P.C.

/s/ A. Jeffrey Misler

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ATTORNEYS FOR BLACK & VEATCH
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**UNITED STATES BANKRUPTCY COURT
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SUMMARY OF EXHIBITS AND CERTIFICATE OF SERVICE

The following exhibits in reference to the Motion for Relief From Automatic Stay are summarized below.

1. Affidavit of Alex E. Wehner;
2. Demand For Arbitration of Black & Veatch Pritchard, Inc.;
3. Farmland Industries, Inc. Statement of Claim and Demand for Arbitration;
4. Black & Veatch Pritchard, Inc. Answering Statement to Claim of Farmland Industries, Inc.
5. American Arbitration Association acknowledgement of demand for arbitration;
6. Farmland Industries, Inc. designation of Richard F. Paciaroni as arbitrator;
7. Black & Veatch Pritchard, Inc. designation of Laurence Schor as arbitrator;
8. Arbitrators designation of William R. King as third arbitrator;
9. ARTICLE 22-Disputes of Lump Sum Agreement for the Coffeyville Gasification Plant; and
10. ARTICLE 22-Disputes of Lump Sum Agreement for the Coffeyville Ammonia Synthesis Loop Project.

Respectfully submitted

DANIELS & KAPLAN, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that the Motion for Relief from Automatic Stay was filed electronically and that a true and correct copy of all documents supporting my motion referenced above, including legible copies of all documents evidencing perfection of security interests have been served on the trustee and debtor's counsel this 12th day of November, 2002 by first-class mail, postage prepaid at the below listed addresses. Copies of the above documents are available to other parties in interest upon request.

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Bryan, Cave
One Kansas City Place
Suite 3500
1200 Main Street
Kansas City, MO 64105-2122

U.S. Trustee Office
Room 3440
400 East 9th Street
Kansas City, MO 64106

/s/ A. Jeffrey Misler