

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI**

In Re:)	In Proceedings Under Chapter 11
)	
FARMLAND INDUSTRIES, INC., et al.,)	Case No. 02-50557
)	Joint Administration
Debtors.)	

**DEBTORS' OBJECTION TO MOTION OF
AMERICAN PLANT FOOD CORPORATION FOR STAY PENDING APPEAL**

COME NOW Farmland Industries, Inc. et al., Debtors and Debtors in Possession ("Debtors"), and for their objection to American Plan Food Corporation's Motion for Stay Pending Appeal, state as follows:

1. In its Motion, filed on October 17, 2002, American Plant Food Corporation ("American") seeks an order staying the Bankruptcy Court's orders, dated September 17 and September 25, 2002, denying approval of the Debtors' sale of the a fertilizer warehouse located in Greenville, Mississippi ("Greenville") to American, and re-opening the bidding process.

2. American had submitted the highest bid, in the amount of \$2,120,500 at an auction sale held on September 9, 2002, pursuant to the Bankruptcy Court's order of August 29, 2002 establishing auction and bid procedures. In its Memorandum Opinion and Order dated September 17, 2002, the Bankruptcy Court declined to approve the sale to American and reopened the bidding, because it determined that United Agri Products, Inc. d/b/a UAP-MidSouth ("UAP"), a party asserting a right of first refusal with respect to Greenville, had not received notice of the auction or an opportunity to bid.

3. On September 25, 2002, the Bankruptcy Court issued an order approving auction and bid procedures and setting final auction of Greenville for October 22, 2002.

4. American filed a notice of appeal of the September 17 and September 25 orders and seeks a stay of the orders pending its appeal.

5. In order to obtain a stay pending appeal, American must establish 1) a substantial likelihood of success on the merits of its appeal; 2) that American will suffer irreparable injury absent the stay; 3) whether a stay would substantially harm other parties in the litigation; and 4) whether the stay furthers the public interest. In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997). This standard is akin to that applied in ruling on a motion for preliminary injunction. Id.

6. With respect to the first factor, it is unlikely American will be successful on the merits of its appeal. A disappointed prospective purchaser lacks standing to challenge an order regarding a debtor's sale of assets under Section 363 of the Bankruptcy Code. See In re O'Brien Environmental, Energy, Inc., 181 F.3d 527 (3rd Cir. 1999); In re Gucci, 126 F.3d 380, 388 (2d Cir. 1997); In re HST Gathering Co., 125 B.R. 466, 468 (W.D.Tex. 1991); Big Shanty Land Corp v. Comer Properties, Inc., 61 B.R. 272 (N.D. Tex. 1985); In re Quanalyze Oil & Gas Corp., 250 B.R. 83 (Bankr. W.D. Tex. 2000). The statutes and rules governing sales of bankruptcy estate assets are designed to protect the estate, not potential purchasers, and confer no rights upon prospective bidders. See In re NEPSCO, Inc., 36 B.R. 25, 26-27 (Bankr. D. Me. 1983)(an entity whose only interest in the proceeding is that it desires to purchase property of the estate is not within the "zone of interests" intended to be protected).

7. In addition to the issue of standing, the bankruptcy court has significant discretion in determining whether to confirm a debtor's sale of assets or re-open the bidding process, striking a "balance between the relevant factors of fairness, finality, integrity and maximization of assets." In re Food Barn Stores, Inc., 107 F.3d 558, 564-565 (8th Cir. 1996). Thus, even if

American has standing to appeal the Court's orders, it must establish the Court abused its discretion, which is unlikely under the facts and circumstances.

8. Second, American need not suffer irreparable harm absent the stay. It may participate in the bidding process on October 22, 2002 and become the successful bidder, while reserving its right to appeal the court's order refusing to approve its original successful bid. In the event its appeal is successful, it may obtain the benefit of its original bargain. If American is confident that it will prevail in its appeal, then it, not the bankruptcy estates, should be willing to bear the risk that it may be the successful bidder at the October 22 auction. While the Debtors acknowledge that this may present a difficult choice for American, it does not rise to the level of irreparable harm necessary to stay the auction pending American's appeal.

9. Staying the auction pending resolution of American's appeal may have a disastrous effect on the ultimate outcome of the auction sale in the event American's appeal is unsuccessful. The parties who intend to participate in the October 22 auction may no longer be interested, or able, to participate in an auction sale at some indeterminate future date. Even if the Court allows the auction process to proceed, but stays closing of the sale pending resolution of the appeal, the delay and uncertainty associated with doing so will likely chill the bidding process.

10. In addition, parties asserting rights of first refusal with respect to the Debtors sale of Greenville, UAP and the Greenville Port Commissions, have agreed to waive those rights in connection with the October 22 sale. The Port Commission's consent is limited to the October 22 sale, and to no subsequent sale or conveyance. If the sale is stayed pending American's appeal, those parties may not again consent to waive their asserted rights of first refusal, and further litigation may be necessary to resolve issues surrounding enforceability of those rights.

Failure to hold the sale when these rights have been waived could result in irreparable harm to the Debtor and its creditors.

11. While instilling confidence in court-approved auction and bid procedures is an important goal, the Eighth Circuit recognizes the competing and equally important goal of maximizing the sale price to be obtained for a debtors' assets. This important goal is furthered by allowing the sale to proceed. In refusing to approve the sale to American and re-opening the bidding, the Court recognized this important goal, as well as the due process rights of UAP, as justification for doing so. Thus, the public interest is better served by insuring that the bankruptcy process achieves its primary goal of maximizing benefit for all creditors.

12. While American's motion indicates that it is willing to provide a letter of credit in the amount of \$2,120,000 – the amount of its original prevailing bid – the Debtors submit that this amount is insufficient to protect the estates against the harm that may result if American's appeal is unsuccessful and the estates are unable to sell Greenville for an amount equal to the minimum bid to be offered by Equalizer, Inc. at the October 22 auction date. Any bond should include not only the amount that American bid in the first auction, but also an additional \$200,000 representing the additional amount that Equalizer has represented it will bid in the second auction, along with additional amounts as the Court deems appropriate to allow for additional bids, costs and expenses.

13. In the alternative, the Debtors suggest that if the Court determines a stay pending appeal is appropriate, it should allow the auction to proceed on October 22, but stay the closing of the sale pending resolution of American's appeal, provided American posts a bond or letter of credit in amount sufficient to cover damages to the estates or third parties who may suffer injury

as a result of the stay. The Court may then set the amount of the bond having the benefit of knowing the ultimate bid amount.

WHEREFORE, the Debtors respectfully request that the Court deny American's motion for a stay pending appeal, or in the alternative, allow the auction to proceed while staying the closing of such sale, and require American to post a bond or letter of credit in an amount sufficient to cover damages to the estates or third parties who may suffer injury as a result of the stay; and provide such other relief as is just and proper.

Dated: October 21, 2002

Respectfully submitted,

FARMLAND INDUSTRIES, INC., ET AL.

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