

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

In re:	§	In Proceedings Under Chapter 11
	§	
Farmland Industries, Inc., et al.,	§	Case No. 02-50557-JWV
Debtors	§	Joint Administration
	§	

JOINT OBJECTION OF GENESIS CAPITAL CORPORATION AND THE CIT GROUP/EQUIPMENT FINANCING, INC. TO “MOTION TO ASSUME FACILITY LEASE AGREEMENT AND PROVIDE NOTICE OF INTENT TO EXERCISE OPTION UNDER THE LEASE TO PURCHASE THE FACILITY” [DOCKET #1023]

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE AND TO PARTIES IN INTEREST:

Genesis Capital Corporation, as successor trustee under F.I. Trust Agreement No. 14 dated as of September 6, 1991, as amended (“Lessor” under the “Trust Agreement”) and The CIT Group/Equipment Financing, Inc. (“CIT” and, together with Lessor, the “Objectors”) jointly object to the motion (“Motion”) of Farmland Industries, Inc. *et al.* (collectively, “Farmland”) to assume the facility lease agreement (“Lease”) with respect to two anhydrous ammonia fertilizer plants in Enid, Oklahoma, and to provide Lessor with notice of Farmland’s intent to exercise its purchase option under the Lease (“Purchase Option”).

Background

1. Objectors adopt and incorporate herein the “Background” section of the Motion, namely paragraphs 4 through 12 thereof, with the exceptions noted in the following paragraph 2 hereof and the additions described in paragraph 3 hereof.

2. Objectors do not adopt (i) the statement in paragraph 7 of the Motion that “[t]he Option Price is significantly below the fair market value of the Facility,” (ii) the statement in paragraph 9 of the Motion that “[t]he Lessor is unwilling to extend the time to assume the Lease and the Option further without significant cost to Farmland” and (iii) the statement in paragraph 10 of the Motion that “[Farmland’s postpetition obligations under the Lease] are included in the Debtors’ current budget.”

3. Genesis Capital Corporation succeeded Bank One Trust Company, N.A. as lessor under the Lease pursuant to the “Notice of Removal of Facility Trustee and Site Trustee and Omnibus Amendment, Appointment and Acceptance Agreement,” both dated as of October 10, 2002. The interest of the beneficiary under the Trust Agreement has been hypothecated to CIT.

Argument

4. Objectors agree with Farmland, the official committee of unsecured creditors and the senior secured lenders (“Senior Lenders”) that bankruptcy courts generally ought to give deference to a chapter 11 debtor’s exercise of sound business judgment with respect to the assumption of contracts and unexpired leases.

5. However, the Motion is supported by no evidence in support of Farmland’s purported sound business judgment because statements, allegations and arguments in a pleading are not evidence. Therefore, Farmland has not carried its burden of proof that assumption of the Lease and exercise of the Purchase Option constitute an exercise of sound business judgment.

6. Nor has Farmland provided any evidence in furtherance of its burden to provide Lessor with adequate assurance of future performance that Farmland (i) can, pursuant to Bankruptcy Code §365(b)(1)(A), promptly pay the \$1.6 million cure amount; (ii) can, pursuant to Bankruptcy Code §365(b)(1)(C), provide future performance under the Lease generally and under the Purchase Option in particular; or (iii) can, pursuant to Bankruptcy Code §365(b)(1)(C), pay the \$25.5 million price in order to exercise the Purchase Option.

a. As to the \$1.6 million cure, not only is there no evidence in support of the Motion, but there is not even an unsupported statement therein to the effect that such sum is included in the DIP financing budget. The fact that the Senior Lenders’ have filed an opposition to the Motion raises the question of whether Farmland will be able to make the cure payment.

b. As to future performance under the Lease and the Purchase Option, not only is there no evidence, but the Motion is deficient even in its allegations as to how Farmland will come up with purchase price (of roughly \$25.5 million) in September of 2003. In light of

the Senior Lenders' opposition to the Motion, it is unrealistic to expect that the Senior Lenders will make \$25.5 million available under the DIP facility next September.

Reservation of Rights

7. Farmland has publicly announced that it intends to exit the fertilizer business and to sell the fertilizer plants that are the subject of the Lease and the Purchase Option. In the event that the Court permits the assumption of the Lease and the exercise of the Purchase Option over Objectors' objection, the Court should make clear that, pursuant to Bankruptcy Code §365(f), Lessor must be provided with adequate assurance of future performance by any purported assignee of the Lease and the Purchase Option.

WHEREFORE, Objectors request that the Court deny the Motion and that it grant such other and further relief as the Court deems proper.

Respectfully submitted this 29th day of October 2002.

Lathrop & Gage L.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above reference Joint Objection of Genesis Capital Corporation and The CIT Group/Equipment Financing, Inc. to "Motion to Assume Facility Lease Agreement and Provide Notice of Intent to Exercise Option under the Lease to Purchase the Facility [Docket' #1023 was served on those parties listed below and those parties which do not receive electronic notice in these proceedings, via facsimile, hand delivery or U.S. Mail, postage prepaid, on October 29, 2002.

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