

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

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

**OBJECTION TO THE DEBTORS' MOTION FOR ORDER
AUTHORIZING PROCEDURE FOR DETERMINING EXTENT,
VALIDITY AND PRIORITY OF MECHANICS' AND ARTISAN'S LIENS**

COMES NOW Secured Creditor Alliance Process Partners, L.L.C., d/b/a International Alliance Group ("IAG") and files this Objection (the "Objection") to the Debtors' Motion for Order Authorizing Procedure for Determining Extent, Validity and Priority of Mechanics' and Artisan's Liens (the "Motion"), and, in support thereof, would show the Court as follows:

**I.
FACTUAL AND PROCEDURAL BACKGROUND**

1. On May 31, 2002 (the "Petition Date"), the Debtors filed separate voluntary petitions for relief under Chapter 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Western District of Missouri.

2. The Debtors continue to operate their businesses and manage their assets as Debtors-In-Possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been appointed.

3. The Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the amended general order of the United States District Court for the Western District of Missouri, as Amended. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

4. On October 14, 2002, Debtors filed a Motion for Order Authorizing Procedure for Determining Extent, Validity and Priority of Mechanic's and Artisan's Liens. In the Motion, the

Debtors request an order from the Court approving a year-long process proposed by the Debtors for the determination of the extent, validity and priority of mechanics and artisan's liens. *See* ¶ 16 of the Motion.

5. IAG has previously filed a Motion for Relief from or Modification of Automatic Stay to foreclose on its two Artisan's Liens in state court, which Motion was argued and denied on October 8, 2002.

II.

ARGUMENT AND AUTHORITIES

IAG's Two Artisan's Liens Should Not Be Grouped With the 60-Plus Mechanic's Liens.

6. The Court will recall that as IAG argued at the October 8, 2002 hearing, it is the only creditor who filed Artisan's Liens under K.S.A. 58-201. IAG did not file a mechanic's lien. Debtor's Motion seeks to deal with both mechanic's liens and artisan's liens in the same adversary proceeding. However, as IAG argued at the October 8, 2002 hearing, IAG's interests and those of the mechanic's lien claimants are materially different. IAG has a lien on the personal property and equipment on which it worked at the Coffeyville, Kansas refinery. The mechanic's lien claimants seek a lien against the real estate, buildings and fixtures on that real estate. The two interests are completely separate and do not overlap. There is no reason to lump IAG's two artisan's liens into the same adversary proceeding with the mechanic's lien claimants.

7. The Title Report for the Coffeyville refinery, dated August 9, 2002 (attached hereto as Exhibit "A") indicates a total of sixty-three (63) mechanic's liens of record through that date, but only two (2) Artisan's Liens (noted as "Personal Property Liens"), i.e. those filed by IAG. IAG does not know how many other liens are involved in the eleven (11) other properties in Iowa, Nebraska, Oklahoma, Illinois or Kansas upon which Debtors claim there are mechanic's liens filed. But there

is absolutely no reason that IAG should have its two (2) Artisan's Liens combined with well over sixty (60) mechanic's liens on multiple properties. Such an adversary proceeding will be protracted, involving multiple state laws, various deeds, mortgages, priorities, notices, valid and invalid liens and legal issues that have nothing at all to do with Kansas law on Artisan's Liens. While Debtors and those various mechanic's lien claimants attempt to sort out those issues and priorities, IAG will be compelled to sit and wait with over \$5 million owed, secured by personal property which is not involved in those mechanic's lien claims.

8. The Title Report, Exhibit "A" indicates that the property is owned by the Debtor Farmland Industries, Inc., and that there is a mortgage against the property held by Bankers Trust Company.¹ Therefore, the only parties that need to be involved in an adversary proceeding to foreclose on IAG's two Artisan's Liens are Farmland Industries, Inc., Bankers Trust Company and IAG. Since Kansas law is crystal clear on the superpriority granted to an Artisan's Lien, the trial of IAG's liens will be very short, likely resolved on a summary judgment motion. IAG objects to joining of all the mechanic's liens into one adversary proceeding with its two (2) Artisan's Liens.

The Process Proposed by Debtors is Unduly Lengthy So as to Prejudice IAG.

9. At this stage in the bankruptcy case, the Debtors are wholly unable to satisfy any need for the extended and prejudicial period of time proposed in the motion to: a) obtain and review title reports for 12 properties; b) file adversary complaints and summons; c) conduct discovery concerning the adversary complaints; and, d) try the adversary complaints concerning mechanics' liens and Artisan's Liens.

10. Debtors propose that the process for each lien above cannot be accomplished in less than one year. While IAG does not know what issues are involved in other mechanic's liens, the

¹IAG's liens take priority over the post-petition lien interests of the DIP lenders. See ¶ 10

issues related to IAG's mechanic's liens are quite simple. IAG believes that Farmland Industries, Inc. does not dispute: 1) the validity of its contracts; 2) that the work was done by IAG; 3) that the amount claimed is correct; 4) that the Artisan's Liens were timely filed. Paragraph 19 of the Court's July 2, 2002 Order carved out IAG's Artisan's Liens from the DIP financing priority by amending Schedule 2.16 to the DIP Credit Agreement. The only issues, therefore, to determine as to IAG are: a) if the equipment upon which IAG worked is "personal property;" and b) whether IAG has priority over Bankers Trust Company. The first issue should not be difficult to establish, and the second issue is well-established under Kansas case law.

11. K.S.A. § 58-201 provides: "Whenever any person, at the owner's request or consent shall perform work, make repairs or improvements or replace, add or install equipment on any goods, personal property, . . . equipment of all kinds . . . a first and prior lien on such personal property is hereby created in favor of such person performing such work, making such repairs or improvements or replacing, adding or installing such equipment and such lien shall amount to the full amount and reasonable value of the services performed and shall include the reasonable value of all material used in performance of such services and the reasonable value of all equipment replaced, added or installed." (emphasis added).

12. Kansas courts consistently recognize the superpriority granted to Artisan's Liens. *Hockaday Auto Supply Co. v. Huff*, 245 P. 1013 (Kan. 1926) (artisan lien superior to prior in time mortgage on equipment or vehicle); *National Bond & Investment Co. v. Midwest Finance Co.*, 134 P.2d 639, 642 (Kan. 1943); *Security Benefit Life Ins. Corp. v. Fleming Co.*, 908 P.2d 1315, 1321 (Kan. App. 1996) (artisan's lien has priority over another's perfected security interest); *Utility Trailers of Wichita, Inc. v. Citizens National Bank & Trust Co.*, 11 Kan.App.2d 421, 726 P.2d 282,

284 (Kan. App. 1986)(“in Kansas, the [artisan’s] lien has priority over earlier perfected security interests”).

13. The time period Debtors seek in which to process the various mechanic's lien claims against Debtor's property is patently unreasonable. As to IAG's two (2) Artisans Liens, it is absurd. The Debtors cannot explain and cannot defend their request for over a year in which to file and try an adversary concerning IAG's Artisan Liens, especially in light of the Debtor's failure to afford secured creditors like IAG even the most basic or minimal adequate protection.

14. The collateral upon which IAG worked and which IAG has liened is currently in use by the Debtor and Debtor has not provided *any* assurance of adequate protection which would insulate IAG from damages due to the collateral depreciating in value due to its use, misuse, neglect, or poor maintenance. Further, IAG has no present ability to protect the collateral or to prevent its diminution in value during the time it waits for its foreclosure and sale. Accordingly, the longer the period provided by the Court for the processing of IAG Artisan's Liens, the greater the prejudice to IAG.

15. Further, the Debtor has not provided evidence that the collateral is insured from loss due to appropriate levels of insurance coverage.

16. Rather than have this large and cumbersome adversary proceeding process which would appear to take longer than a year to even begin, IAG renews its request that IAG be allowed to operate outside the adversary proceeding process and proceed in Kansas State Court proceedings where Artisan Liens can be more efficiently resolved. In the alternative, Debtor and IAG should resolve their dispute over the two (2) Artisan's Liens in a separate adversary proceeding, with a schedule more appropriate to that case, as set out below.

The Process Proposed by Debtors Prejudices IAG as It Is Unreasonably Lengthy to Resolve the Narrow Issues of IAG's Artisan Liens.

17. To resolve the two (2) Artisan's Liens, IAG suggests that the year-long schedule proposed by Debtors can be reduced by a separate adversary proceeding involving only Artisan's Liens to not more than six (6) months for the following reasons:

A. The only Debtor involved in the property on which IAG has Artisan's Liens is Farmland Industries, Inc. (See Title Report, Exhibit "A").

B. The only other creditor who claims an interest by mortgage on that property is Bankers Trust Company (See Title Report, Exhibit "A").

C. There are no other Artisan's Liens against the personal property that IAG has lienied besides IAG's two Artisan's Liens (See Title Report, Exhibit "A").

D. Debtor, Farmland Industries, Inc., has had over four (4) months, since June 5, 2002 (date IAG filed its Artisan's Liens) to "obtain and review title reports, appraisals, mechanics' and artisans liens statements, invoices, related lien waivers, and relevant state law." Counsel for IAG sent Debtor's counsel copies of the leading Kansas cases on Artisan's Liens on July 10, 2002. (See Exhibit "B", attached hereto). Counsel has had over three (3) months to read those cases and become familiar with the law.

E. Debtor knew, or should have known, that there are no other Artisan's Liens of records related to the Coffeyville refinery and does not need months to research and review title reports. (See Title Report, Exhibit "A").

F. No more than thirty (30) days is needed for Debtors to review the Title Report for the Coffeyville refinery, which IAG is providing as Exhibit "A" as a courtesy to Debtors. (§ 11 of the Debtor's Motion proposes 60-90 days).

G. Debtors should be able to draft and file the Adversary Complaint as to IAG's two Artisan's Liens in that same thirty (30) days, since IAG has provided Debtors with the Title Report. (¶ 12 of the Debtor's Motion proposes an extra 30 days).

H. Debtors should be able to conduct discovery in the proposed sixty (60) days after filing the Adversary Complaint, and IAG does not object to that time period as suggested in ¶ 13 of the Debtor's Motion.

I. Debtors should be able to review IAG's documents during that same sixty (60) day time period, especially since IAG believes that there is no dispute as to the contracts, the scope of work and the amount owed. Most of the documentation related to the Artisan's Lien was attached to the liens themselves and is already in Debtors' possession. (¶ 14 of the Debtor's Motion proposes an additional 90 days).

J. Debtors propose commencing settlement meetings with lien claimants 90 days after exchange of documents. IAG has been attempting to have those discussions with Debtors' counsel for months, without success. IAG is ready as soon as the document review has occurred to have those discussions and, as to IAG's two (2) Artisan's Liens, 90 days is unreasonably long for Debtors to review and respond to IAG with a settlement proposal. (¶ 15 of the Debtor's Motion proposes an extra 90 days).

K. Debtors propose a one-year period for trial setting after the Adversary Complaint is filed. (¶ 16 of the Debtor's Motion). IAG represented to the Court at the October 8, 2002 hearing that this matter could be resolved in Kansas State Court in six (6) months. Given the narrow scope of IAG's Artisan's Liens and the related legal issues, IAG believes that no more than six (6) months is needed before its lien claim is set for trial, and suggests that summary judgment motions be heard prior to that date.

Venue Is Proper In Montgomery County, Kansas.

18. K.S.A. § 58-202, dealing with Artisan's Liens, states that, "Such lien may be enforced and foreclosed as security agreements are enforced under the provisions of the uniform commercial code."

19. K.S.A. § 60-1006 titled "Foreclosure of security interest", states that,

"A secured party may bring an action in the district court to reduce an indebtedness to a money judgment and to foreclose the security interest in specific personal property given to secure such indebtedness. The secured party, at any time before judgment is rendered, may cause the specified security to be taken into the possession of the appropriate officer to await further order of the court under the following procedure: [then follows a procedure to affidavits, verified petition, hearing and bond to seize and remove such personal property] "

The statute also permits the secured party to apply for a restraining order, "imposing such conditions and restrictions as the court deems necessary to protect the property during the pendency of the action and to protect the court's jurisdiction over such property. Such restraining order may be issued without the requirement that the plaintiff file a bond as required for issuing an order for the delivery of the property." See also, K.S.A. § 61-3702.

20. It appears from this statute that Kansas law requires the secured party to bring the foreclosure action for personal property in Kansas District Court. To the extent that Debtors take the position that the personal property is really a "fixture" and, therefore, part of the real estate, K.S.A. § 60-601, titled "Actions concerning real property" requires such foreclosure action to be brought in the county "in which the real estate is situated." In either case, Kansas Statutes indicate that venue is proper in Montgomery County, Kansas.

Foreclosure Sale Should Take Place In Montgomery County, Kansas.

21. K.S.A. § 58-212 requires that the foreclosure sale on a personal property lien be at public auction, for cash. IAG suggests that such sale should take place in Montgomery County, Kansas, where the property is located, where bidders can examine the equipment and personal

property, rather than in this Court. A sale remote from Coffeyville might not bring top dollar for the equipment at issue.

22. Under the Kansas Uniform Commercial Code, K.S.A. § 84-9-601 (f), “A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.” Again, it is proper for such sale to take place in Montgomery County, Kansas where bidders can view, inspect and appraise the personal property prior to sale. This cannot be done in Kansas City, Missouri.

The Advantages of a Single Adversary Proceeding for Both Mechanic's and Artisan's Liens Are Significantly Outweighed by the Prejudice to IAG.

23. The only advantage one can perceive in the process proposed by Debtors is that the Debtors will not have to obtain local counsel in the state forums where these statutory claims should be heard. Debtors' argument that there will be a significant advantage to the Debtors of bringing all the parties and all issues regarding the properties and mechanic's lien together in a single forum is outweighed by several countervailing factors, including, but not limited to:

A. The inconvenience and detriment to the lien creditors, like IAG, who must bide their time and suffer potential injury to their property while the Debtors bureaucratically process the many liens against the twelve (12) properties;

B. The burden on the parties in litigating their claims far from the locations of the Projects where witnesses reside and work, and where significant and large physical evidence is located and may need to be viewed by the finder(s) of fact;

C. The cumbersome and costly process of over 60 lien claimants receiving, reviewing and responding to pleadings filed by other lien claimants whose liens do not relate to one another;

D. The risk of a foreclosure sale at a location remote from the property at issue, thereby limiting the number and amount of bids at such sale;

E. The requirement that execution on the property or equipment lien must be brought under state law in a state court action.

24. As noted in subpoint E, in the preceding paragraph, the method and process proposed by the Debtor does not end IAG's collection efforts. As explained by ¶ 20 of the Debtor's Motion, proceedings will be held to determine the extent, validity and priority of the statutory liens. It is apparent that once these steps have been taken, IAG will still have to take necessary steps, under Kansas law and in a Kansas state action, to execute and foreclose on the property at issue. This results in duplicative proceedings in Federal and State Court, rather than one proceeding in Kansas State Court.

Conclusion.

25. The Debtors' proposed process fails to account for the differences in mechanic's liens and Artisan's Liens, will add substantial legal fees to all lien claimants of both types, and adds months to the process necessary to resolve IAG's Artisan Lien claims merely to accommodate Debtor's review of other, irrelevant liens on other property and in other states. "Oranges" should not be treated the same as "apples" and consistent results for the Debtor does not equate to fair or equitable treatment of different lien claimants.

26. Debtor claims that "Some contractors that assert liens may claim economic hardship, however these contractors are in no worse position than Farmland's other creditors who must wait for Farmland to confirm a plan or reorganization in order to realize on their claims." ¶ 9 of the Debtor's Motion. IAG does not know about other creditors, but there are very few lien claimants who are owed over \$5 million, as IAG is. IAG has carried this debt since its work was completed on April 4, 2002 and its economic hardship is certainly greater than creditors owed substantially less. (See Title Report for range of lien claims, only two of which are over \$1 million, and most of which are under \$100,000.)

27. In sum, IAG objects to this Motion as the Motion:

A. Fails to take into account the prejudice to the secured parties like IAG due to the delay;

B. Fails to segregate or distinguish the very different liens at issue, and the priority the liens are afforded under the applicable state law;

C. Fails to take into account the execution and foreclosure on the statutory lien once the Debtors' proposed process is complete;

D. Fails to take into account IAG's need for adequate protection pending this lengthy lien processing procedure; and

E. Fails to offer a process whereby the advantages of the process outweigh the detriment imposed on the impacted creditors, the Court, and the resolution of this Bankruptcy proceeding.

WHEREFORE, for the foregoing reasons, Alliance Process Partners, doing business as IAG, respectfully requests this Court enter an Order denying the process proposed by the Debtors in its Motion and for such other and further relief as the Court deems just and proper, including an Order granting IAG and Debtors permission to modify the Automatic Stay to permit a foreclosure action to be filed in Montgomery County, Kansas.

Respectfully submitted this 29th day of October, 2002.

/s/ G. William Quatman

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ATTORNEYS FOR ALLIANCE PROCESS
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection has been served by first class mail, postage pre-paid on those parties on the Master Service List not receiving email notice on this 29th day of October, 2002.

/s/ G. William Quatman

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