

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

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| IN RE: |) | |
| |) | |
| FARMLAND INDUSTRIES, ET AL., |) | IN PROCEEDINGS UNDER CHAPTER 11 |
| |) | |
| |) | Case No. 02-50557-JW |
| |) | Joint Administration |
| Debtors |) | |
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**OBJECTION AND MOTION FOR RELIEF FROM ORDER GRANTING
ADMINISTRATIVE CLAIM IN LIEU OF RECLAMATION**

COMES NOW the Movant, Wiese Material Handling, Inc, (hereinafter referred to as “Movant”) by and through counsel, Colin N. Gotham of Evans & Mullinix, P.A., and for its Objection and Motion for Relief from Order Granting Administrative Claim in Lieu of Administrative Claim. In further support of this Objection and Motion, Movant respectfully presents as following:

BACKGROUND FACTS

1. On or about May 31, 2002, the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code.
2. On or about June 4, 2002, the Debtors filed their Motion for Order Granting Administrative Claim in Lieu of Reclamation, and Approving Procedure for Allowing Such Claims Pursuant to 11 U.S.C. 546(c).

3. On or about June 4, 2002, Bryan Cave, LLP, the attorneys for Debtors, faxed the Motion for Order Granting Administrative Claim in Lieu of Reclamation to Movant. Movant understood said facsimile to indicate that the Debtors considered Movant and other named creditors to be creditors asserting reclamation claims and subject to the relief requested in the Motion for Order Granting Administrative Claim in Lieu of Reclamation.

4. On or about June 4, 2002, the Court entered an Order Granting Administrative Claim in Lieu of Reclamation, and Approving Procedure for Allowing Such Claims Pursuant to 11 U.S.C. §546(c).

5. On or about May 24, 2002, Movant shipped equipment to Farmland Industries, Inc. in Coffeyville, Kansas with the following description: C-06-796 Cat Master Craft Rough Terrain and other accessories, commonly known as a forklift (hereinafter referred to as "Forklift").

6. The sale of the Forklift was on an installment basis with three (3) monthly payments of One Thousand Six Hundred Fifty Dollars (\$1,650.00) and the final payment in the fourth month in the amount of Thirty Thousand Six Hundred Twenty Five Dollars (\$30,625.00).

7. Upon receiving notice of the filing of the bankruptcies of the Debtors, Movant sent timely written demand to Debtor Farmland Industries, Inc. for reclamation of the Forklift.

8. Said demand for reclamation was timely made under 11 U.S.C. §546(c) and applicable non-bankruptcy law.

9. This debt of Farmland Industries, Inc. is a post-petition debt due to the fact that performance by Farmland Industries, Inc. was not due to occur until after the bankruptcy was filed.

10. Movant has contacted the attorneys for the Debtors and the Debtors have asserted that Movant's claim is a post-petition debt arising in the ordinary course, but the record before the Court does not reflect this position nor have the Debtors produced any documentation confirming this position.

RELIEF REQUESTED

11. Movant asserts that the debt is a post-petition obligation and should be paid according to the agreed upon terms as a post-petition debt. If the Court holds that the debt is pre-petition, and part of the bankruptcy estate and subject to the Court's prior Order Granting Administrative Claim in Lieu of Reclamation, then Movant asserts that it has a valid right of reclamation that should not have been eliminated with the Court's previous Order.

12. 11 U.S.C. 546(c) of the Bankruptcy Code authorizes vendors who have sold goods to a Debtor in the ordinary course of business to reclaim such goods.

13. A seller may be able to reclaim property if (a) the debtor was insolvent when the goods were delivered; (b) the seller demanded reclamation in writing; (c) such demand was made within ten (10) days after the debtor received possession of the goods (or within twenty (20) days if the ten-day period would expire after the expiration date); and (d) the seller is otherwise

entitled to reclamation under applicable state law. See, In Re Rawson Food Service, Inc., 846 F.2 1343, 1346-48 (11 Cir. 1988); See generally, In Re Braniff, Inc., 113 B.R. 745, 751 (Bankr. M.D. Fla. 1990).

14. Movant asserts the following: (1) the Farmland Industries, Inc. insolvent when the goods were delivered; (b) the Movant demanded reclamation in writing; (c) such demand was made within ten (10) days after the debtor received possession of the goods (or within twenty (20) days if the ten-day period would expire after the expiration date); and (d) the Movant is otherwise entitled to reclamation under applicable state law.

15. The Court, in deciding reclamation claims, should strike a balance between the Debtors' need for the goods in order to continue its ongoing business operation, and the seller's interest in the goods. See, In Re Flagstaff Food Service Corp., 14 B.R. 462, 468 (Bankr. S.D.N.Y. 1981). The Court also must weigh the Debtors' need for goods in light of the Code's policy encouraging companies to reorganize against the seller's rights under state law to physically reclaim the goods. See, In Re Coupon Carriers Company, 77 B.R. 650, 652 (N.D.Ill. 1987); See also, In Re Continental Airlines, Inc., 125 B.R. 415, 417 (Bkrtcy. D.Del. 1991).

16. The goods sold to Farmland Industries, Inc. by Movant are not essential for the continued operation of Debtors' business and will not severely or potentially irreparably prejudice the Debtors if the Movant is allowed to exercise its reclamation rights and recover possession of the goods, as alleged by Debtors in the Motion for Order Granting Administrative Claim in Lieu of Reclamation.

17. The goods sold by Movant have not been incorporated into Debtors' pre-existing inventory, nor have they been used or consumed by Debtors' customers or commingled in Debtors' bank accounts, as alleged in Debtors' Motion for Order Granting Administrative Claim in Lieu of Reclamation.

18. If Movant is allowed to reclaim its goods in kind, the Debtors' businesses will not encounter a severe disruption and will not be irreparably harmed, as alleged in Debtors' Motion for Order Granting Administrative Claim in Lieu of Reclamation..

19. The Forklift sold to the Debtors is not critical to the Debtors' continued operation. The Debtors will be able to provide products and services to their customers without the use of the Forklift.

20. Movant has satisfied the requirements of the Bankruptcy Code and non-bankruptcy law to exercise a right of reclamation and should be allowed to exercise such right.

21. The debt with Movant is post-petition and not subject to the Court's prior Order Granting Administrative Claim in Lieu of Reclamation, or in the alternative, Movant should be allowed to exercise its right of reclamation.

WHEREFORE, for the reasons discussed herein, Movant respectfully requests that the Court grant this Motion and issue an Order stating that Movant's claim is a post-petition claim and not subject to the Court's prior Order Granting Administrative Claim in Lieu of Reclamation, or in the alternative, issue an Order allowing Movant's right of reclamation and directing the Debtors to

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return Movant's property, and for such other and further relief as the court deems just and proper
in the premises.

Respectfully Submitted:

EVANS & MULLINIX, P.A.

/s/ Colin N. Gotham
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ATTORNEYS FOR WIESE MATERIAL
HANDLING, INC.

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing Objection and
Motion for Relief was mailed postage prepaid this 14th day of June, 2002, to the following:

Laurence M. Frazen
Mark G. Stingley
Cynthia Parres
Bryan Cave LLP
1200 Main Street, Ste. 3500
Kansas City, MO 64105

/s/ Colin N. Gotham
Colin N. Gotham