

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

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In Re: Chapter 7  
Bky. Case No. 03-61267

David Gerald Sexton and  
Wendy Marie Sexton,

Debtors.

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**NOTICE OF MOTION AND MOTION  
OBJECTING TO CLAIM OF CREDITOR**

TO: MARK SALITERMAN, MACHINE TOOL FINANCING, SUITE 100, 4301 HIGHWAY 7,  
ST. LOUIS PARK, MN 55416; AND OTHER PARTIES IN INTEREST:

1. Dorraine A. Larison, the Trustee in the above-captioned matter, makes the following objection to the claim filed by Machine Tool Financing, (the "Claimant") in the debtors' bankruptcy case.

2. The Court will hold a hearing on this motion at 10:30 a.m. on July 27, 2004, in Courtroom No. 2, United States Courthouse, 118 South Mill Street, Fergus Falls, Minnesota.

3. Any response to this motion must be filed and delivered on or before July 20, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than July 16, 2004, which is ten (10) days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, and Local Rule 1070-1. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

This case was commenced by the filing of a petition under Chapter 7 on October 2, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. §§ 502 and 704, Bankruptcy Rules 3001 and 3007 and Local Rule 3007-1. This motion is filed under Bankruptcy Rules 9013 and 9014 and Local Rules 9013. Movant requests relief with respect to the Claimant's claim filed in the debtors' case.

6. The Claimant filed a proof of claim on February 13, 2004, asserting an unsecured claim in the amount of \$108,533.81. A copy of the proof of claim is attached hereto as Exhibit "A" (Claim No. 5). The proof of claim indicates that the basis for the claim is "money loaned."

7. On or about April 22, 2004, the Trustee corresponded with the Claimant and indicated that she believed the Claimant did not have a basis to assert that the debt was owed by the debtors as the documents attached to the claim indicated that the debt was purchased by Bremer Bank and that the personal guaranty executed by David Sexton was released at the same time the debt was assigned. The Trustee also asked that Claimant either agree its claim was not valid and withdraw the claim, or provide information to the Trustee to support the assertion that the debt was owed by the debtors. A copy of the Trustee's letter is attached hereto as Exhibit "B." The Trustee received a response to her letter from the Claimant stating that the claim related to money taken from the company by the debtors as a loan, but the Claimant could not provide documents verifying the loan.

8. There does not appear to be any basis to conclude that the claim filed by the Claimant is a valid claim.

WHEREFORE, the Trustee respectfully requests that the Court disallow Claim No. 5 of Machine Tool Financing in its entirety, pursuant to 11 U.S.C. § 507 and Local Rule 3009-1(a).

Dated this 24th day of May, 2004.

/e/ Dorraine A. Larison  
Dorraine A. Larison  
I.D. No. 203609  
Gray, Plant, Mooty, Mooty & Bennett, P.A.  
1010 West St. Germain  
Suite 600  
St. Cloud, MN 56301  
(320) 252-4414  
Attorneys for the Trustee

VERIFICATION. I, Dorraine A. Larison, Movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: May 24, 2004

/e/ Dorraine A. Larison  
Dorraine A. Larison, Trustee

GP:1587422 v1

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA (FERGUS FALLS)		PROOF OF CLAIM
Name of Debtor DAVID GERALD SEXTON WENDY MARIE SEXTON	Case Number 03-61267 - DDO	5  U.S. BANKRUPTCY COURT DISTRICT OF MINNESOTA FERGUS FALLS, MN  RECEIVED FEB 19 2004
<b>NOTE:</b> This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. §503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): MACHINE TOOL FINANCING Name and Address where notices should be sent:  MACHINE TOOL FINANCING 4301 HWY 7 STE 100 ST LOUIS PARK MN 55416	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Telephone Number:	Account or other number by which creditor identifies debtor:	<input type="checkbox"/> Check here if this claim <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, dated _____.
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input checked="" type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. §1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)
<b>2. Date debt was incurred:</b>		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>108,533.81</u> if all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____  Value of Collateral: \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>6. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$ 2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).  *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>9. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		SEND CLAIM TO: U.S. BANKRUPTCY COURT 204 U.S. COURTHOUSE 118 SOUTH MILL STREET FERGUS FALLS, MN 56537
Date <u>2/19/04</u>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>Mark Saliternau CFC</u>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

MACHINE TOOL FINANCING, INC.  
4301 Highway 7, Suite 100  
St. Louis Park, MN 55416  
(952) 920-8282

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August 25, 2003

Dave Sexton  
40294 County Road 1  
Rice, MN 56367

RE: Default of Note

Dear Mr. Sexton,

This letter is a demand for payment and advising you that you are in default of your note. This note was originally payable to Brockway Bryce, Inc. (Brockway). As you know, Machine Financing LLC (Machine) purchased all of the debt previously owed by Bremer Bank which was secured by all the assets of Brockway including your note now owned by Machine. The approximate amount is \$108,000. The exact amount including legal fees and interest can be given to you when you inform us the date you intend to pay the note. In addition, you personally guaranteed all the debt owed by Brockway, originally to Bremer and now due Machine. After liquidation of the assets, the deficiency is approximately \$600,000 which is now due and payable.

Please contact us immediately so we can arrange a closing date or a payment agreement. This letter is sent to you certified mail and if you do not contact us within 5 days from receipt, we will have our attorney begin a judgement action.

Sincerely,



Mark Saliterman  
CFO

MAS/vhl

Date : 06/12/02  
 Time : 9:05 AM

Brockway Machinery, Inc.  
 10200 North 73rd Avenue  
 Suite 126  
 Maple Grove, MN 55369-5618

Page no. 1

As of 06/30/02

BALANCE SHEET

Account	Account Name	General Acct	Detail Acct
11051	Accts Rec Module		80966.12
11052	Cash Draw - Sexton D		94033.81
11055	DRAWS - Regional Mgrs		0.00
11055	N/R - EMPLOYEES		0.00
1106	Bremer Bank Checking		0.00
11071	Inventory Module		169344.43
11072	Inventory		-118898.92
1108	Wells Fargo Checking		4247.06
12011	Furn & Fix. Orig. Value		37472.73
12013	Vehicles		71786.70
12021	Office Equip. Orig. Val.		140310.80
120211	Network System		36638.99
12031	Gold Mine Software		13803.18
12041	Maple Grove Improvements		90219.75
12072	Accumalated Depreciation		-203536.84
13010	Prepaid Trade Show Exp.		0.00
13011	Lease Deposit		925.00
13012	Prepaid Insurance		-0.00
13013	Damage Deposit - Caliber		5300.00
13015	Down Payments Disbursed		2530.00
13018	Prepaid Rent		0.00
13019	Other Prepaid Expenses		0.00
	Total Assets		425142.81

*Dave Sexton*

**BROCKWAY MACHINERY, INC.**  
10200 73RD AVE N, SUITE 128  
MAPLE GROVE, MN 55389  
(763) 424-2144

ANCHOR BANK, NA  
WAYZATA, MN 55391  
75-142R910

5/10/2002

1007

PAY TO THE ORDER OF Dave G Sexton

\$ \*\*15,000.00

Fifteen Thousand and 00/100 \*\*\*\*\* DOLLARS @

Dave G Sexton  
40294 County Road 1  
Rice, MN 56367

MEMO

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*Dave Sexton*

5257012955

MR. JAMES J. BRYCE  
ANCHOR BANK, NA  
20000150 22 22 06 541 05291

047 65146

05/13/02 0500119800 02  
ANCHOR BANK, NA  
1010-1-126

**BROCKWAY MACHINERY, INC.**  
10200 73RD AVE N, SUITE 126  
MAPLE GROVE, MN 55369  
(789) 424-2144

ANCHOR BANK, NA  
WAYZATA, MN 55391  
75-1426910

8/30/2002

10312

PAY TO THE ORDER OF Dave G Sexton

Five Thousand and 00/100\*\*\*\*\*

\$ 5,000.00

DOLLARS

Dave G Sexton  
40294 County Road 1  
Rice, MN 56367

MEMO

⑈010312⑈ ⑈09101426 P⑈ ⑈322585⑈

⑈00000500000⑈

BROCKWAY MACHINERY, INC.  
ANCHOR BANK, NA  
WAYZATA, MN 55391  
75-1426910

21

IFR HELIX 100 07/03/02  
TRACTOR 3577 017  
40910-0001-94  
0950045525

47600

*Dave Sexton*

Printed on Recycled Paper  
Anchor Bank, NA  
Wayzata, MN 55391  
75-1426910

T BRYCE&ASSOC'S

*Handwritten signature*

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780096210  
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ANCHOR BANK  
MINNAPOLIS, MN

ANCHOR BANK, N.A.  
11/28/02 0100046130 02  
ANCHOR BANK, N.A.  
11/28/02 0100046130 02

**BROCKWAY BRYCE TECHNOLOGIES, INC.**  
10200 73RD AVE N, SUITE 128  
MAPLE GROVE, MN 55359  
(763) 424-2144

ANCHOR BANK, NA  
WAYZATA, MN 55391  
76-1426710

10581

11/18/2002

4:36PM  
PAY TO THE ORDER OF David G Sexton

\$\*\*10,000.00

DOLLARS

David G Sexton  
40294 County Road 1  
Rice, MN 56367

Ten Thousand and 00/100\*\*\*\*\*

FEB. 10. 2004

Expenses

⑈000010000000⑈

*Handwritten signature*  
⑈000010000000⑈

Anchor Bank is a member of the FDIC. Anchor Bank is not a bank. Anchor Bank is a service mark of Anchor Bank. Anchor Bank is not a bank. Anchor Bank is a service mark of Anchor Bank. Anchor Bank is not a bank. Anchor Bank is a service mark of Anchor Bank.

**BROCKWAY BRYCE TECHNOLOGIES, INC.**  
**Account QuickReport**  
All Transactions

Type	Date	Num	Name	Memo	Split	Amount	Balance
Receivable - D Sexton							
Check	5/10/2002	10075	David G Sexton		Anchor Bank	15,000.00	15,000.00
General Journal	5/30/2002	3			-SPLIT	94,033.81	109,033.81
General Journal	5/30/2002	3			Receivable - D...	-15,500.00	93,533.81
Check	5/30/2002	10512	David G Sexton		Anchor Bank	5,000.00	98,533.81
Check	11/15/2002	10561	David G Sexton		Anchor Bank	10,000.00	108,533.81
Total Receivable - D Sexton						108,533.81	108,533.81
TOTAL						108,533.81	108,533.81

Filing NO: 2003636971  
 Filing Date: 2003/01/28  
 Filing Time: 4:03 PM  
 State of Minnesota  
 Processing Office: Secretary of State  
 Filed by: nehno01

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]  
**Terry Bryce 763-424-2144**

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Mark E. Fuller  
 7301 Ohms Lane  
 Suite 325  
 Edina, MN 55439**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a INITIAL FINANCING STATEMENT FILE #  
**2147201**

1b This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS

2  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement

3  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4  ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9

5 AMENDMENT (PARTY INFORMATION): This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes.  
 Also check one of the following three boxes and provide appropriate information in items 6 and/or 7:  
 CHANGE name and/or address. Please refer to the detailed instructions in regards to changing the name/address of a party  
 DELETE name. Give record name to be deleted in item 6a or 6b  
 ADD name. Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable)

6 CURRENT RECORD INFORMATION:

6a ORGANIZATION'S NAME

6b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7 CHANGED (NEW) OR ADDED INFORMATION:

7a ORGANIZATION'S NAME  
**Machine Tool Financing, LLC**

7b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

**4301 Highway 7, Suite 100 St. Louis Park MN 55416 USA**

7d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 7e. TYPE OF ORGANIZATION 7f JURISDICTION OF ORGANIZATION 7g ORGANIZATIONAL ID #, if any  NONE

8 AMENDMENT (COLLATERAL CHANGE): check only one box.  
 Describe collateral  deleted or  added, or give entire  restated collateral description, or describe collateral  assigned.

9 NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral, or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here  and enter name of DEBTOR authorizing this Amendment.

9a ORGANIZATION'S NAME

9b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

**Bryce Terry**

10 OPTIONAL FILER REFERENCE DATA

Uniform Commercial Code  
180 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
Saint Paul, MN 55155



Mary Kiffmeyer  
Secretary of State

## Minnesota Central Filing System

UCC Amendment Acknowledgement

January 28, 2003

Page 1 of 2

MARK FULLER & ASSOCIATES LTD  
7301 OHMS LN #325  
EDINA MN 55439

The Minnesota Central Filing System has received and filed your document. The information below reflects the data that was indexed in our system. Please review the information for accuracy. If you find a potential error, please notify the appropriate filing office.

Client Account Number: 14061385

Document Number: 3795960002

Amendment Type: Assignment

Amendment Number: 2003636971

Filing Type: UCC Financing Stmt

Original Filing Number: 2147201

File Date: 01/28/2003

File Time: 4:03 p.m.

Lapse Date: 07/14/2004

<u>Party Type</u>	<u>Party Name and Address</u>
Debtor	<b>Brockway Machinery Inc Maple Grove MN</b>
Secured Party	<b>Bremer Bk NA St Cloud MN</b>
Secured Party	<b>BRYCE TERRY PLYMOUTH MN</b>
Secured Party	<b>MACHINE TOOL FINANCING LLC ST LOUIS PARK MN</b>
Secured Party	<b>T BRYCE &amp; ASSOCIATES INC PLYMOUTH MN</b>

Come visit us on the internet at <http://www.sos.state.mn.us/>

Filing by the Minnesota Central Filing System is not conclusive proof that all conditions for securing priority have been met. Ensuring that accurate information is on the document to be filed is the responsibility of the filing party. If the filing is challenged, the filing office does not guarantee that the filing is legally sufficient to secure priority under UCC Article 9 and expressly disclaims any liability for failure of the filing party to secure priority resulting from the information contained in the filed document, or the lack of information on the filed document.

User ID: nehno01

County ID: 88

Uniform Commercial Code  
180 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
Saint Paul, MN 55155



Mary Kiffmeyer  
Secretary of State

Office of the Secretary of State  
Packing Slip

January 28, 2003

MARK FULLER & ASSOCIATES LTD  
MARK E FULLER  
7301 OHMS LN #325  
EDINA, MN 55439

Page 1 of 1

Client Account Number: 14061385  
Batch Number: 379596

Document Number	Document Detail	Filing Number	Fee
3795960002	Assignment - UCC1 Standard	2003636971	20.00

Total Fees \$20.00

<u>Payment Type Received</u>	<u>Payment Reference Number</u>	<u>Amount Paid</u>
Check	3445	20.00
Total Payments Received		<u>\$20.00</u>

Any overage amount on account with our agency will be refunded after 60 days if not used.

Come visit us on the internet at <http://www.sos.state.mn.us/>

MAR. 5. 2002 3:38PM TEL JE+ASSOC. / EDM TECH CENTER

NO. 216 P. 2/17

**FULL ASSIGNMENT, SETTLEMENT AND RELEASE AGREEMENT**

1.0 This Assignment, Settlement and Release Agreement ("Agreement") is entered into this \_\_\_\_ day of March, 2002, by and between Bremer Bank, N.A., 1100 West St. Germain Street, P.O. Box 847, St. Cloud, Minnesota 56302, hereinafter referred to "Bremer"; Brockway Machinery, Inc., 10200 73<sup>rd</sup> Avenue North, Suite 128, Maple Grove, Minnesota 55367, hereinafter referred to as "Brockway"; David G. Sexton, 40294 County Road 2, Rice, Minnesota 56367, hereinafter referred to as "Sexton"; and Terry Bryce, 2155 Niagara Lane North, Suite 102, Plymouth, Minnesota 55447, hereinafter referred to as "Bryce".

**I. RECITALS****A. Promissory Note #691511**

1.1 On or about July 23, 2001, Brockway executed and delivered to Bremer Promissory Note #691511 payable in the principal amount of \$119,625.00. To secure repayment of Promissory Note #691511, Brockway executed and delivered to Bremer a Commercial Security Agreement granting Bremer a security interest in all inventory, chattel paper, accounts, equipment and general intangibles. Promissory Note #691511 is also secured by security agreements dated July 12, 1999, and July 19, 2001, and is perfected by Financing Statements of record.

MAR. 5. 2002 3:30PM

TBI ASSOC. / EDM TECH CENTER

1.2 Promissory Note #891511 is also guaranteed by David G. Sexton pursuant to a Commercial Guaranty Agreement executed by David Sexton and delivered to Bremer Bank on July 12, 1999.

1.3 As of February 7, 2002, the balance outstanding on Promissory Note #891511 is as follows:

Principal	\$119,625.00
Accrued Interest	\$ <u>972.12</u>

TOTAL AMOUNT DUE: \$120,573.02

Interest continues to accrue on this obligation at the daily rate of \$19.9375 until this obligation is paid in full, as provided herein.

B. Promissory Note #89246

1.4 On or about July 12, 1999, Brockway executed and delivered to Bremer Promissory Note #89246 payable in the principal amount of \$200,000.00, subsequently increased to \$500,000.00. To secure repayment of Promissory Note #89246, Brockway executed and delivered to Bremer a Business Loan Agreement and a Commercial Security Agreement granting Bremer a security interest in all accounts receivable, inventory and equipment. Bremer Bank has filed the appropriate financing statements and has properly perfected its security interest in the collateral above described. Repayment of Promissory Note #89246 is guaranteed by David G. Sexton pursuant to a personal guaranty dated July 12, 1999.

MAR. 5. 2002

3:30PM

TBI

CLASSOC. / EDM TECH CENTER

1.5 That as of February 7, 2002, the balance outstanding on

Promissory Note #89246 is as follows:

Principal	\$498,000.00
Accrued Interest	<u>\$ 2,158.00</u>
TOTAL AMOUNT DUE:	<u>\$500,158.00</u>

Interest continues to accrue on this obligation at the daily rate of \$83.00 until this obligation is paid in full, as provided herein.

C. Promissory Note #89247

1.6 That on July 12, 1999, Brockway executed and delivered to Bremer Promissory Note #89247 payable in the principal amount of \$100,000.00. To secure repayment of Promissory Note #89247, Brockway executed and delivered to Bremer a Business Loan Agreement and a Commercial Security Agreement granting Bremer a security interest in all furniture, fixtures, equipment and leasehold improvements of Brockway. Bremer has perfected its security interest as evidenced by Financing Statements of record. Promissory Note #89247 is also personally guarantied by a Commercial Guaranty executed by David G. Sexton and delivered to Bremer on or about July 12, 1999.

1.7 The balance outstanding on Promissory Note #89247 as of February 7, 2002, is as follows:

Principal	\$66,267.60
Accrued Interest	<u>\$ 254.02</u>
TOTAL AMOUNT DUE:	<u>\$66,521.62</u>

MAR. 5.2002 3:31PM

TBR. 2+ASSOC. / EDM TECH CENTER

NO.216 P.5/17

Interest continues to accrue on this obligation at the daily rate of \$11.0446 until this obligation is paid in full, as provided herein.

D. Promissory Note #691869

1.8 On September 6, 2001, Brockway executed and delivered to Bremer Promissory Note #691869 payable in the principal amount of \$35,000.00. To secure repayment of Promissory Note #691869, Brockway executed and delivered to Bremer a Commercial Security Agreement granting Bremer a security interest in all inventory, chattel paper, accounts, equipment, general intangibles together with the following specifically described property: one used OKK-V1 Vertical Milling Machine serial #132 including all accessions and attachments. Bremer's security interest is perfected by Financing Statements of record. To further secure repayment of Promissory Note #611869, Sexton executed and delivered to Bremer a Commercial Guaranty guarantying the indebtedness of Brockway dated July 12, 1999.

1.9 That as of March 7, 2002, the balance outstanding to Bremer as evidenced by Promissory Note #691869 is as follows:

Principal	\$35,000.00
Accrued Interest	<u>\$ 186.66</u>
<b>TOTAL AMOUNT DUE:</b>	<b><u>\$35,186.66</u></b>

Interest continues to accrue on this obligation at the daily rate of \$5.8333 until this obligation is paid in full, as provided herein.

MAR, 5.2002 3:31PM

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NO.216 P.6/17

1.10 Brockway was indebted to Bremer pursuant to Promissory Note #682252 dated October 19, 2001, in the original principal amount of \$50,000.00, which was paid in full through Bremer's exercise of its right to setoff on or about December 21, 2001. Brockway is also indebted to Bremer pursuant to Promissory Note #691867 dated September 6, 2001, in the original principal amount of \$35,000.00, which was paid in full on January 17, 2002, from the sale of the collateral securing repayment of the note.

1.11 Brockway and Sexton have an obligation outstanding to Elan Financial Services concerning a credit card issued to Brockway Machinery, Inc., on account #4798-1711-1800-9551. As of the date of this Agreement, the balance outstanding on said credit card is in excess of \$16,000.00. Sexton guaranteed payment of the credit card obligation.

1.12 The above referred to promissory notes were all cross-collateralized by all other security agreements of record including those dated July 12, 1999; July 19, 2001; and July 23, 2001. The above referred to promissory notes and Elan Credit Card constitutes all of the indebtedness of Brockway and Sexton outstanding to Bremer.

1.13 The parties to this Settlement Agreement have had the opportunity to review the Promissory Notes, Business Loan Agreements, Commercial Security Agreements, Financing Statements, Personal Guaranty of Sexton and have also had the opportunity to conduct their

MAR. 5. 2002 3:31PM TEL: CE+ASSOC. / EDM TECH CENTER

NO. 216 P. 7/17

Uniform Commercial Code UCC Search and are satisfied that the indebtedness as referred to herewithin is justly due and owing in the amounts referred to herewithin, and that Bremer has properly perfected its security interests in all collateral referred to herewithin.

1.14 Brockway and Sexton acknowledge that their obligations outstanding to Bremer as evidenced by the Promissory Notes as referred to herewithin are in default.

1.15 The parties have conducted numerous discussions and are agreeable to enter into this Assignment, Settlement and Release Agreement to satisfy Brockway and Sexton's obligations outstanding to Bremer memorialized solely by Promissory Notes #691511, #89246; #89247; #691869 and David Sexton's Personal Guaranty dated July 12, 1999.

1.16 WHEREFORE, the parties hereby stipulate, agree, and make the following covenants and warranties:

## II. FULL ASSIGNMENT

2.0 Simultaneously upon the execution of this Agreement by all parties and not until then, Bremer hereby assigns and sets over to Bryce all of its rights, title and interest in the following loan documentation and the rights and interests Bremer has acquired because of said loan documentation:

- a. Promissory Note #691511 and corresponding loan agreements, security agreements and financing statements;
- b. Promissory Note #89246 and corresponding business loan agreements, security agreements, and financing statements;
- c. Promissory Note #89247 and corresponding business loan agreements, security agreements, and financing statements; and
- d. Promissory Note #691869 and corresponding business loan agreements, security agreements, and financing statements of record.

2.1 Simultaneously upon Bremer's assignment of the promissory notes and related loan documents as referred to in paragraph 2.0, Bryce hereby authorizes Bremer and its representatives to withdraw from the Serkland Law Firm Trust Account the sum of \$200,000.00 which was wired to the Serkland Law Firm by Bryce on or about February 4, 2002.

2.2 Bremer's assignment of the Promissory Notes, Business Loan Agreements, Security Agreements, and Financing Statements as referred to in paragraph 2.0 are "As Is", "Where Is", "With All Faults", and "Without Any Warranties or Representations" including any

warranties or representations as to the legality, enforceability, authenticity, or any and all other warranties and the partial assignment is made without recourse. Bryce has had an opportunity to investigate and determine for himself the enforceability, authenticity, genuineness of the Promissory Notes, Loan Agreements, Security Agreements, and Financing Statements being assigned hereto by Bremer to Bryce.

2.3 The parties stipulate and agree that this Agreement shall suffice as a sufficient assignment of Bremer's interests in the promissory note and related loan documents referred to in paragraph 2.0 of this Agreement being assigned to Bryce. Bremer shall transfer said original loan documents as referred to in paragraph 2.0 to Bryce at closing.

2.4 Release. Simultaneously upon the execution of this Agreement and Bremer's surrendering to Bryce the loan documents as referred to herewithin, Bryce hereby releases Bremer, and Immediate Financial Solutions, Inc., the respective agents, officers, employees, attorneys, whether past or present, from any and all causes of action, claims, demands, controversies, litigation, indemnification, claims for contribution and lawsuit and any and all other rights and claims that Bryce may assert against Bremer and the parties referred to herewithin, whether known or unknown, whether arising in law or equity, any time from the beginning of the world from the date of this Agreement including all claims that Brockway, Sexton, and any creditor of Brockway and Sexton may

have to the loan documents they have assigned to transfer to Bryce hereunder.

III. PAYMENT OF CREDIT CARD DEBT

3.0 As of the date of this Agreement, Brockway and Sexton have a credit card obligation outstanding to Elan Financial Services evidenced by account #4798-1711-1800-9551 in which Bremer Bank has 45% liability if the credit card is not timely paid. The credit card is in the name of Brockway Machinery, Inc. Sexton has guaranteed payment of this credit card debt. As of the date of this Agreement, a sum in excess of \$16,000.00 is due and owing on said credit card.

3.1 With the authority of Elan Financial Services, Bremer hereby accepts sum of ~~\$16,000.00~~ <sup>\$15,662.75 DGS/TS</sup> in full and complete satisfaction of Brockway Machinery, Inc.'s obligation outstanding Elan Financial Services/Bremer pursuant to a credit card account #4798-1711-1800-9551.

3.2 Prior to the execution of this Agreement by Bremer, Bryce and/or Sexton shall have transferred to the Serkland Law Firm by wire transfer funds the sum of ~~\$16,000.00~~ <sup>\$15,662.75 DGS/TS</sup>.

3.3 Sexton represents that the Elan Financial Services credit card account #4798-1711-1800-9551 has been cut in half and returned to Bremer Bank. Sexton stipulates and agrees that Elan Financial Services/Bremer may close said account.

#### IV. RELEASE OF GUARANTY

4.0 Simultaneously upon the execution of this Agreement by all parties and upon Bremer's receipt of the sum of \$200,000.00 from the Serkland Law Firm Trust Account ("Account") wire transferred to the Account by Bryce and upon Bremer's receipt of the sum of \$40,000.00 wire transferred to the Account by Sexton, and the sum of ~~\$10,000.00~~ <sup>\$15,662.75</sup> for payment in full of the Elan Financial Services/Bremer credit card account #4798-1711-1800-9551, Bremer hereby transfers to Sexton his July 12, 1999, Personal Guaranty marked "Paid In Full", "Satisfied", and "Null and Void" and Bremer deems the Personal Guaranty dated July 12, 1999, and any other personal obligation Sexton may have for the debts of Brockway released, satisfied, and null and void. DES/BJ

4.1 Representations and Warranties of Sexton. In Order for Bremer to make its informed decision to partially assign its loan documentation to Bryce in the amount of \$200,000.00 and for Bremer to release Sexton's Guaranty for \$40,000.00, Bremer received from Sexton a financial statement dated January 10, 2002, a copy of which is attached hereto as Exhibit A and incorporated by reference. Sexton represents and warrants to Bremer that the financial statement, Exhibit A, is true and correct as of the date hereof and that the funds estimated to be held in the profit sharing and 401K plans referenced therein are to the best of Sexton's information, knowledge and belief exempt pursuant to Minnesota

Statute § 550.37 and the decision rendered in Patterson v. Schumate, 112 S.Ct. 224 (1992).

4.2 The Parties stipulate and agree in the event that Bremer determines in its judgment, that Sexton intentionally omitted personal property assets in the combined value in excess of \$20,000.00 or, as to the real property, by an amount that would have resulted in equity for a creditor had the asset been correctly valued, as of the date the financial statements submitted and attached hereto as Exhibit A, then Bremer may declare its release of the guaranty null and void and may commence an action against Sexton on his guaranty. Any such action commenced by Bremer must be commenced by February 14, 2004. The parties understand that as of the date of this Settlement Agreement, although not appearing in Sexton's financial statement attached hereto as Exhibit A, Mr. Sexton is a 50% owner of a Minnesota C corporation known as Atrix Machinery, Inc., and Sexton is also a 50% shareholder in a Minnesota S corporation known as De-Icing Technologies, Inc. Sexton contends that both corporations have no value.

4.3 Upon Bremer's request Sexton shall furnish Bremer with information regarding the retirement plans disclosed in his financial statement Exhibit A. In the event that Bremer determines, in its considered judgment, that Sexton's retirement plans are not ERISA qualified, are not exempt by Federal Bankruptcy or state law, Bremer may declare its

release of the guaranty null and void and then commence an action against Sexton on his guaranty. Any such action by Bremer must be commenced by February 14, 2004.

4.4 Mutual Release. Simultaneously upon the execution of this Agreement by Sexton and Bremer's receipt of the sum of \$256,000.00 from the Serkland Law Firm Trust Account, Brockway and Sexton hereby release Bremer, Immediate Financial Solutions, Inc., their respective agents, officers, employees, and attorneys, whether past or present, and Bremer hereby releases Brockway and Sexton, their respective agents, officers, employees, and attorneys, whether past or present, each other and one another, from any and all causes of action, claims, demands, controversies, litigation, indemnification, and lawsuits and any and all other rights and claims that the parties may assert against one another, whether the claims are known or unknown, whether arising in law or equity, from the beginning of the world to the date of this Agreement including all claims that Sexton and Brockway may assert against Bremer for lender liability, improper offset, breach of lending agreement, and any and all other claims.

4.5 This release does not prohibit Bremer from pursuing any remedy it may have under Sections 4.2 and 4.3 above.

## V. MISCELLANEOUS PROVISIONS

5.0 Entire Agreement. This Agreement constitutes the complete and entire understanding of the parties consenting Bremer's assignment of Brockway's obligation outstanding to Bremer to Bryce of Promissory Notes #691511, #89246, #89247, and #891869 and related business loan agreements, security agreements, and financing statements and Bremer's satisfaction and return to David Sexton his personal guaranty dated July 12, 1999. Any oral or written agreements, representations and understandings between parties made prior to or contemporaneously with the effective date of this Agreement have either been incorporated into this Agreement or are hereby revoked, released, and terminated before the date of this Agreement. No modifications, additions, deletions, or amendments to this Agreement shall be binding upon either party unless the same are reduced to writing and the writing is signed by all parties. All of the terms and conditions of this Agreement are subject to the approval of Bremer and until Bremer has executed this Agreement, such approval has never been obtained or granted.

5.1 Governing Law. This Agreement shall be governed by and construed according to the laws of the state of Minnesota. If any ambiguity exists in this Agreement the parties stipulate and agree that the ambiguity will not be construed against Bremer Bank solely because Bremer Bank drafted this Agreement.

MAR-08-02 WED 09:02 AM BREMER

FAX NO. 1  
FAX NO. 17012374049

P. 02  
P. 16/17

MAR-05-2002 TUE 03:55 PM SERKLAND LAW

MAR. 5.2002 3:24PM TBRYCE+ASSOC. / EDM TECH CENTER

NO.216 P.17/17

5.2 Brockway and Sexton Have No Other Obligations Outstanding to Bremer Bank. Brockway, Sexton, and Bremer stipulate and agree that Brockway and Sexton have no other obligations in whole or in part outstanding to Bremer including checking overdraft protection, ready reserve protection, and credit card obligations.

5.3 Document Execution. Bremer, Brockway, Sexton and Bryce stipulate and agree that they shall execute whatever documents another party deems are reasonably necessary to carry out the terms and effect of this Agreement.

5.4 Authority to Execute Documents. The parties executing this Agreement hereby represent, warrant and acknowledge that they are authorized under applicable law to execute, deliver and perform this Agreement and all documents, instruments, and agreements executed in connection herewithin. That this Agreement is a legal, valid and binding obligation of the parties.

Dated this 5 day of March, 2002.

Bremer Bank, N.A.,

Richard C. Wolf  
By: \_\_\_\_\_  
As: SENIOR VICE PRESIDENT

MAR-08-02 WED 08:02 AM BRE...R

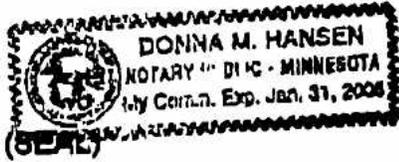
MAR-05-2002 TUE 03:58 PM SERKLAND LAW

MAR. 5. 2002 3:58PM TERRYCE+ASSOC. / EDH TECH CENTER

FAX NO. 1  
FAX NO. 17012374049

NO. 216 P. 15/17

Subscribed and sworn to before me this 6<sup>th</sup> day of March, 2002.



Donna M Hansen  
Notary Public  
My Comm. Expires:

Dated this 5 day of March, 2002.

Brockway Machinery, Inc.

David G Sexton  
By: David G Sexton  
Its: President

Subscribed and sworn to before me this \_\_\_\_\_ day of March, 2002.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Comm. Expires:

Dated this 5 day of March, 2002.

David G Sexton  
By: David G. Sexton, Individually

Subscribed and sworn to before me this \_\_\_\_\_ day of March, 2002.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Comm. Expires:

MAR. 5. 2002 3:34PM TB. JE+ASSOC. / EDM TECH CENTER

Dated this 5 day of March, 2002.

T. Bryce



Subscribed and sworn to before me this \_\_\_\_\_ day of March, 2002.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Comm. Expires:

Exhibit "B"

**DORRAINE A. LARISON**  
TRUSTEE IN BANKRUPTCY  
1010 West St. Germain, Suite 600  
St. Cloud, MN 56301  
Telephone (320) 252-4414  
Facsimile (320) 252-4482

April 22, 2004

MARK SALITERMAN  
MACHINE TOOL FINANCING INC  
4301 HIGHWAY 7 SUITE 100  
ST LOUIS PARK MN 55416

RE: David and Wendy Sexton  
Bky. Case No. 03-61267

Dear Mr. Saliterman:

I have been appointed the trustee in regard to the above-referenced bankruptcy case. Enclosed is a copy of the notice of my appointment.

Recently, I reviewed the claims submitted on behalf of creditors in this matter. You submitted a claim on behalf of Machine Tool Financing, Inc. in the amount of \$108,533.81. The claim was filed as Claim Number 5 and is marked as an unsecured claim. I am enclosing a copy of the claim for your review.

My review of the claim shows that this is a debt owed by Brockway Machinery, Inc. and not the debtors. As you know, the debtors operated Brockway Machinery, Inc. This bankruptcy case is for the individual debtors and not the corporation.

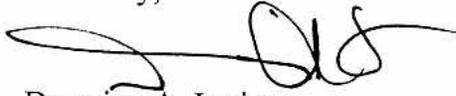
The documentation you attached to the claim indicates that the debt was purchased from Bremer Bank. The documentation also shows that the personal guaranty executed by David Sexton was released at the same time the debt was assigned. As a result, this is a debt owed by the corporation and not the debtors. Therefore, the claim is not a valid claim in this case.

If you agree with my position, please execute the original of this letter withdrawing the claim and return it to me as soon as possible. If you disagree with my position, please

provide me with documentation which shows that the debtors are personally liable for this debt.

Should you have any questions regarding this matter, please feel free to contact me or my paralegal, Nancy Lyke-Hilla.

Sincerely,



Dorraine A. Larison  
Trustee in Bankruptcy

Enclosures

MACHINE TOOL FINANCING, INC. agrees with the Trustee that the claim it filed in the David and Wendy Sexton bankruptcy case (Bky. Case No. 03-61267) as Claim Number 5 is a claim against Brockway Machinery, Inc. Therefore, MACHINE TOOL FINANCING, INC. hereby withdraws Claim No. 5.

MACHINE TOOL FINANCING, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Chapter 7  
Bky. Case No. 03-61267

David Gerald Sexton and  
Wendy Marie Sexton,

UNSWORN CERTIFICATE OF SERVICE

Debtors.

---

I, Jean Eisenschenk, declare under penalty of perjury that on May 24, 2004, I mailed the following documents:

**NOTICE OF MOTION AND MOTION OBJECTING TO CLAIM OF CREDITOR AND PROPOSED ORDER**

by first class mail postage prepaid to each entity named below at the address stated below for each entity:

UNITED STATES TRUSTEE  
1015 US COURTHOUSE  
300 SOUTH FOURTH STREET  
MINNEAPOLIS MN 55415

WILLIAM P KAIN  
ATTORNEY AT LAW  
13 S SEVENTH AVE  
ST CLOUD MN 56301

DAVID GERALD SEXTON  
40294 COUNTY ROAD 1  
RICE MN 56367

WENDY MARIE SEXTON  
40294 COUNTY ROAD 1  
RICE MN 56367

MARK SALITERMAN  
MACHINE TOOL FINANCING  
4301 HIGHWAY 7 SUITE 100  
ST LOUIS PARK MN 55416

Executed on: May 24, 2004

/e/ Jean Eisenschenk  
Jean Eisenschenk  
GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.  
Suite 600  
1010 West St. Germain Street  
St. Cloud, MN 56301

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

-----  
In Re:

BKY. NO. 03-61267  
Chapter 7

David Gerald Sexton and  
Wendy Marie Sexton,

**ORDER**

Debtors.

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At Fergus Falls, Minnesota, \_\_\_\_\_, 2004.

Upon the Objection to the claim of Machine Tool Financing, filed by the trustee, and upon all the files and records of the proceedings herein,

IT IS ORDERED:

1. The claim of Machine Tool Financing, filed in the debtors' bankruptcy case as Claim No. 5, is disallowed.

\_\_\_\_\_  
Dennis D. O'Brien  
UNITED STATES BANKRUPTCY JUDGE