

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: James M. Schultz,)	
)	
Debtor,)	Bky No.: 04-60289-DDO
)	
CMGB Farms,)	
)	
Plaintiff,)	Chapter Seven
)	
vs.)	
)	Adv. Proc. No.: 04-6041
James M. Schultz,)	
)	
Defendant.)	

**DEFENDANT’S NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

TO: PLAINTIFF, AND HIS ATTORNEY, CARL MALMSTROM:

The Defendant, James M. Schultz (“Defendant”) moves this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for the entry of summary judgment, dismissing the Complaint of the Plaintiff, CMGB Farms (“Plaintiff”) with prejudice.

1. The Court will hold a hearing on this motion on November 16, 2004, at 1:00 p.m., U.S. Bankruptcy Courtroom #204, U.S. Courthouse, 118 South Mill Street, Fergus Falls, Minnesota.

2. Any response to this motion must be filed and delivered not later than seven days, including intermediate Saturdays, Sundays and legal holidays, prior to the time set for the hearing or mailed and filed not later than ten days before the hearing date. Unless a response opposing the motion is timely filed, the Court may grant the motion without a hearing.

3. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and

34 Bankruptcy Rule 5005 and Local Rule 1070-1. The adversary proceeding in which this motion is filed is a core proceeding. The petition commencing this case was filed March 15, 2004. The case is a Chapter 7 liquidation action. Said bankruptcy case and this adversary proceeding are now pending in this Court. This is a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

4. The Defendant believes that the granting of summary judgment in his favor is appropriate for the following reasons:

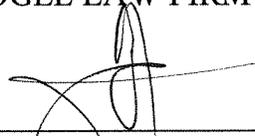
- a) Plaintiff's claims arise from a contract that the Plaintiff entered into with an entity by the name of Northland Ag Builders, LLC. Northland Ag Builders, LLC is an entity in which Defendant has an ownership interest. In that Defendant was not a party to the contract, the same cannot provide a basis for the instant adversary action.
- b) Even if the Defendant would be deemed to have liability with respect to the contract entered into between the Plaintiff and Northland Ag Builders, LLC, no facts exist to provide a basis for Plaintiff's claim that the subject debt is nondischargeable under the provisions of 11 USC § 524(a)(4). The uncontested facts establish Defendant's right to the entry of judgment in his favor as a matter of law.

This motion is based on all the files and pleadings herein and Defendant's memorandum and law in support of the instant motion for summary judgment.

Dated this 15th day of October, 2004.

VOGEL LAW FIRM

By



Jon R. Brakke (#10765)

218 NP Avenue

P.O. Box 1389

Fargo, North Dakota 58107-1389

(701) 237-6983

ATTORNEYS FOR RESPONDENT

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: James M. Schultz,)	
)	
Debtor,)	Bky No.: 04-60289-DDO
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CMGB Farms,)	
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James M. Schultz)	
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Defendant.)	

**MEMORANDUM IN SUPPORT OF DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Defendant James M. Schultz (“Defendant”) brings this motion for summary judgment on Plaintiff CMGB Farm’s (“Plaintiff”) adversary action Complaint. In April, 2002 Plaintiff and a business by the name of Northland Ag Builders, L.L.C. (“Northland”) entered into a contract wherein Plaintiff purchased grain bins and equipment from Northland. Plaintiff paid \$32,709.50 to Northland for the grain bins and equipment. Northland did not perform its obligation under the contract and did not return the funds to the Plaintiff.

In March, 2004 Defendant individually filed for bankruptcy protection under Chapter 7. Plaintiff has brought this adversary action in the bankruptcy case claiming that the \$32,709.50 it paid Northland represents a nondischargeable debt. Plaintiff’s claim fails as a matter of law. Defendant, in his individual capacity, is not liable for Northland’s obligations.

Moreover, even if Defendant is deemed responsible for the acts of Northland there is no factual basis to Plaintiff's claim issue that Defendant committed fraud as a fiduciary, embezzlement or larceny. Thus summary judgment on Plaintiff's claim should be granted accordingly.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. At all times material Northland was a Minnesota limited liability company in which the Defendant held an ownership interest.

2. Plaintiff CMGB Farms ("Plaintiff") is a Minnesota Partnership composed of Garrett Chisholm, Cameron Chisholm, Matthew Chisholm and Brandon Chisholm. (Exh. A, Complaint to Determine Dischargeability of a Debt (By Creditor), ¶ 4a)

3. Northland Ag Builders, LLC ("Northland") is a limited liability company organized and existing under the laws of the State of Minnesota. The Defendant James M. Scultz ("Defendant") is a principal of Northland. (Exh. B, Defendant's Responses to Plaintiff's Interrogatories and Request for Production of Documents, ¶ 1)

4. On April 11, 2002 Plaintiff accepted a proposal from Northland for the purchase of two 3607 Conrad American grain bins and related equipment and accessories. (Exh. A, ¶ 4c; Exh. C, Proposal of April 11, 2002)

5. On or about April 11, 2002 Northland paid Conrad American, the grain bin and equipment manufacturer \$2,522.00 for the grain bins and equipment Plaintiff ordered. (Exh. A, ¶ 4e)

6. On April 25, 2002 Plaintiff sent Northland \$32,709.50 for the full amount due

for the purchase and delivery of the grain bins and equipment. (Exh. A, ¶ 4d; Exh. D)

7. The check was deposited in a bank account maintained by Northland. (Exh. D, ¶ 3)

8. Northland did not deliver the grain bins and equipment to the Plaintiff or return the money Plaintiff paid Northland. (Exh. A, ¶ 4f)

9. On March 15, 2004, Defendant, individually, filed a petition for relief under Chapter 7 of Title 11, United States Code.

10. Plaintiff brought a Complaint against Defendant claiming that the debt Northland owes it in the amount of \$32,709.50 is excepted from discharge in Defendant's individual bankruptcy proceeding pursuant to 11 U.S.C. § 523(a)(4).

III. LAW AND ARGUMENT

A. Standard of Review

Summary judgment shall be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c).

B. Defendant is not individually liable for the limited liability company's obligations.

A member, governor, manager, or other agent of a limited liability company is generally not liable for the acts, debts, liabilities or obligations of the limited liability company. Minn. Stat. § 322B.303, subd. 1. Individual members of a limited liability corporation are not parties to contracts entered into by the company. See Arent v. Dist. Sciences, Inc., 975 F.2d 1370, 1374- 75 (8th Cir.1992). The same holds true after the limited liability company has dissolved.

Minn. Stat. § 322B.303, subd. 3.

Here, Plaintiff entered into a contract for the sale of grain bins with Northland. At that time Northland was (and still) is a limited liability company organized under the laws of the State of Minnesota and registered with the Minnesota Secretary of State. At all times material in this case, Plaintiff dealt with Northland. The proposal and invoice at issue in the transaction listed the seller as Northland. The check issued was made payable to Northland. The check was deposited in Northland's bank account.

Plaintiff's claims are against Northland Ag Builders, LLC, rather than the Defendant in his individual capacity. As a result, Northland's obligation to Plaintiff cannot be a basis for the interest adversary action.

C. No factual basis exists for Plaintiff's claim that the subject debt is nondischargeable under 11 U.S.C. § (a)(4).

Notwithstanding the fact that Defendant is not personally liable for Northland's obligations, Plaintiff's claim that the debt is excepted from discharge under 11 U.S.C. § 523(a)(4) on the facts alleged fails as a matter of law. The relevant code section provides that a debt is excepted from discharge if it was the result of "fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." 11 U.S.C. § 523(a)(4). "Exceptions to discharge are construed narrowly." In re Belfry, 862 F.2d 661, 662 (8th Cir. 1988) (citations omitted). The party opposing discharge has the burden of proving that a debt falls within a statutory exception. Id. As a matter of law, Plaintiff cannot meet its burden of proving that Northland's obligation falls within a statutory exception.

1. No fraud or defalcation was committed while acting in a fiduciary capacity.

In order to meet the exception that the debt was created by fraud or defalcation while acting in a fiduciary capacity, the party claiming the exception must prove (1) the existence of a trust; (2) the debtor had been a fiduciary of that trust; and (3) fraud or defalcation was committed by the debtor while acting as fiduciary of trust. In re Koch, 197 B.R. 654 (Bkrcty.W.D.Wis.1996). The concept of a “fiduciary” is narrowly interpreted to promote the Bankruptcy Code’s fresh start policy. In re Kaczynski, 188 B.R. 770 (Bkrcty.D.N.J.1995).

Under the pertinent statute, the definition of “fiduciary” is a question of federal law. In re Hartman, 254 B.R. 669, 671 (Bkrcty.E.D.Pa. 2000) (citations omitted). “The term is limited to instances involving express or technical trusts which were ‘imposed before and without reference to the wrongdoing that caused the debt.’” Id. The fiduciary relationship must have existed prior to the time that the transaction resulting in debt arose and the debt must have resulted from the debtor acting in that fiduciary capacity. Id. Three elements must be met in order to establish the existence of an express trust:

- (1) a designated trustee subject to enforceable duties;
- (2) a designated beneficiary vested with enforceable rights; and
- (3) a definite trust res wherein the trustee’s title and estate is separated from the vested beneficial interests of the beneficiary.

In re Bren, 284 B.R. 681, 697 (Bkrcty.Minn. 2002). An express or technical trust must be formed by “direct and positive acts of both parties manifested by some instrument in writing, whether by deed, will, or otherwise. Id.

Here, there is no evidence or even claim of the requisite fiduciary relationship between

Plaintiff and Defendant. No express or technical trusts were created before the transaction occurred or any time thereafter. Indeed, there is no evidence that Plaintiff, Defendant or Northland had any prior dealings before the transaction at issue occurred. Rather, this case presents a situation where Plaintiff purchased goods from Defendant in an arm's length transaction. Such dealings do not give rise to a fiduciary relationship. There is no evidence that Plaintiff placed any trust in Defendant giving rise to a fiduciary relationship. As a matter of law, the debt cannot be exempt from discharge under this exception.

2. *The debt was not incurred by embezzlement.*

For the purposes of 11 U.S.C. § 523(a), “embezzlement” is the “fraudulent appropriation of property of another by a person to whom the property has been entrusted or into whose hands it has lawfully come.” In re Belfry, 862 F.2d 661, 662 (8th Cir. 1988). In contract cases, where the debtor partially performs or takes on an obligation of future performance, embezzlement cannot occur. The law is well-settled that “payment of a contract price in exchange for the recipient to undertake an obligation of future performance transfers the ownership of the money to the recipient.” In re Bren, 284 B.R. at 698. As a result, [o]ne cannot embezzle one’s own property.” Id.

This principle was recognized in the case of In re Bren. There, a housing contractor entered into a contract with homeowners wherein he was to receive installment payments as the contract progressed. Id. at 688. He received payments from the owners and performed some work on the home. Id. However, the contractor failed to pay the subcontractors for their work. Id. As a result, both the subcontractors and, ultimately, the contractor terminated work

on the home. Id. The contractor filed for bankruptcy and the owners brought an adversary action for the additional money they expended on finishing the home. Id. The owners claimed, in part, that the debt was nondischargeable because the contractor had embezzled funds. Id. at 698. The Court held that the creditors had failed to prove embezzlement. Id. It reasoned that the contractor had a right to the payments once certain items were installed on the owner's property. Id. Thus, when this occurred, payment lawfully transferred to the contractor. Id. Finding that the contractor could not embezzle his own property, the court dismissed the owners adversary action . Id.

Similarly, in this case, Northland promised future performance (i.e. delivery of the grain bins and equipment) Northland initiated performance under the contract when it sent the grain bin and equipment manufacturer \$2,522.00 on or about April 11, 2002 for the items Plaintiff had ordered. At the time Northland sent this payment, Northland acquired a right to the funds Plaintiff subsequently remitted. Because Defendant could not embezzle funds lawfully within his control, no embezzlement occurred.

Moreover, as a matter of law, Defendant lacked the requisite intent to embezzle for the purposes of 11 U.S.C. § 523(a)(4). Under the statute, the creditor must prove the debtor's fraudulent intent in taking the property for the debtors own personal use. Matter of Miller, 156 F.3d 598 (5th Cir. 1998). Fraud for embezzlement purposes must be fraud in fact, involving intentional wrong or moral turpitude, rather than implied or constructive fraud. In re Schultz, 46 B.R. 880, 889 (Bkrtcy.D.Nev. 1985). A debtor lacks the requisite intent to embezzle for the debtor's own personal gain where the funds are reinvested in the debtor's

business for traditional business purposes or used to pay normal business debts. In re Hartman, 254 B.R. at 674.

In In re Hartman, a business owner entered into a loan agreement with a bank to operate a retail clothing business. Id. at 671. The bank advanced funds and the owner executed a security agreement with the bank. Id. The owner was forced to close stores and the loan went into default. Id. Later the owner filed for bankruptcy. The bank responded with an adversary action claiming that the debt the business owed it (the proceeds of the sale of collateral) was nondischargeable because the owner had embezzled the funds pursuant to 11 U.S.C. § 523(a)(4). Id. The court found that the bank failed to establish a claim of embezzlement because it could not establish the requisite state of mind of the debtor. Id. at 674. The debtor was able to show that almost all of the proceeds she received from the sale of collateral were reinvested in the business and used for traditional business purposes, such as payment of business debts. Id. Indeed, the court determined this despite the fact the debtor had used a portion of the proceeds from the sale of collateral to pay for personal medical bills. Id. Because she had made efforts to make the business work, the court found she did not have the requisite intent to embezzle the bank's collateral for her own personal gain. Id.

Here, the funds Plaintiff paid Northland for the grain bins were used for business purposes. The payment was deposited in a bank account maintained by Northland. There is no evidence that Defendant used the funds for his own personal gain. As a result, Defendant lacked the requisite intent to embezzle for the purposes of this statute. As a matter of law, Northland's debt is not excepted from discharge under this provision.

3. *Larceny did not occur.*

Larceny for the purposes of 11 U.S.C. § 523(a)(4) is "the fraudulent and wrongful taking and carrying away of the property of another with the intent to covert such property to the taker's use without the consent of the owner." In re Graham, 194 B.R. 369, 374 (Bankr.E.D.Pa.1996). Pursuant to the contract for the purchase of the grain bins, Plaintiff consented to Northland's receipt of the funds by sending it a check to purchase the grain bins and equipment. Thus, Northland's acquisition of the funds was lawful. As a matter of law, the debt is not excepted from discharge under this provision.

CONCLUSION

Based on the foregoing, the Court should grant Defendant James M. Schultz's motion for summary judgment and dismiss Plaintiff's claims with prejudice. First, Defendant is not personally liable for Northland's obligations. Second, there is no factual basis to Plaintiff's claims that the subject transaction was the result of fraud on the part of a fiduciary, embezzlement or larceny.

Dated this 15th day of October, 2004.

VOGEL LAW FIRM

By 

Jon R. Brakke (#10765)

218 NP Avenue

P.O. Box 1389

Fargo, North Dakota 58107-1389

(701) 237-6983

ATTORNEYS FOR DEFENDANT

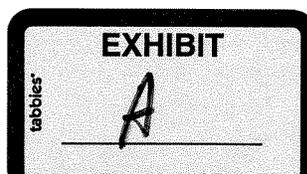
United States Bankruptcy Court
District of Minnesota

**COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT
(BY CREDITOR)**

In re: James M. Schultz,)	
)	
Debtor,)	
)	Case No: 04-60289-DDO
CMGB Farms,)	
)	
Plaintiff,)	Chapter Seven
)	
vs.)	
)	Adv. Proc. No _____
James M. Schultz, d/b/a)	
Northland Ag Builders,)	
)	
Defendant.)	

CMGB Farms, Plaintiff herein, complaining of the Defendant, alleges as follows:

- (1) This as an adversary proceeding to determine the dischargeability of a debt pursuant to Bankruptcy Rules 4007 and 7001(6).
- (2) On March 15, 2004, the above-named Debtor, Defendant herein, filed a petition for relief under Chapter 7 of Title 11, United States Code.
- (3) The Debtor is indebted to Plaintiff in the principal sum of \$32,709.50 and said debt is founded upon a claim which is excepted from a discharge in bankruptcy pursuant to the terms of 11USC §523(a).
- (4) Said debt arose as follows:
 - a. Plaintiff CMGB Farms is a Minnesota Partnership composed of Garrett Chisholm, Cameron Chisholm, Matthew Chisholm and Brandon Chisholm.
 - b. Daryl Chisholm is the father of the partners of CMGB Farms and has had at all relevant times herein the authority to represent and act on behalf of the partnership.
 - c. That on April 11, 2002 Plaintiff accepted a proposal from Defendant for the purchase of two 3607 Conrad American grain bins and related equipment and accessories to be placed on the Plaintiff's farm in Norman County, Minnesota.
 - d. That on April 25, 2002 Plaintiff sent to Defendant at Defendant's request payment in the amount of \$32,709.50, the full amount due for the purchase and delivery of said bins and equipment, on the fraudulent representation of Defendant he had paid



\$26,105.00 to Conrad American for the construction of said bins, and that the related equipment and accessories had been ordered.

- e. That Defendant failed to use Plaintiff's funds to pay for any equipment or materials with the exception of \$2,522.00 paid to Conrad American on or about April 11, 2002.
 - f. That Defendant failed to deliver to Plaintiff the grain bins and related equipment as promised or to return the money paid by Plaintiff to secure the purchase of the same.
 - g. That Defendant solicited and received the above said payment from Plaintiff as a deposit for an improvement of Plaintiff's farm real estate and willfully and wrongfully converted said funds to his own use without Plaintiff's knowledge or consent.
- (5) Pursuant to §523(a)(4) of said Title 11, the discharge of the debtor would not release the debtor from the aforesaid debt.
- (6) Pursuant to Bankruptcy Rule 7008 Plaintiff states that this is a core proceeding.

WHEREFORE, Plaintiff prays for an order determining said debt to be nondischargeable and for judgment against the Debtor in the sum of \$32,709.50 together with interest from April 25, 2002, and for such other and further relief as is just and equitable.

Date: June 4, 2004


Carl E. Malmstrom
Thorwaldsen, Malmstrom, Sorum,
Wilson, LaFlair & Majors
Attorneys for Plaintiff
1105 Highway 10 East
P.O. Box 1599
Detroit Lakes, MN 56502-1599
(218) 847-5646
Attorney Registration No. 143613

United States Bankruptcy Court
District of Minnesota

In re: James M. Schultz,)	
)	
)	Bky: 04-60289
CMGB Farms,)	
)	
)	
Plaintiff,)	
)	
vs.)	
)	Adv. 04-6041
James M. Schultz, d/b/a)	
Northland Ag Builders,)	
)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I, Rhanda Shaw, certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made. I further certify that the service of this summons and a copy of the complaint was made on June 10, 2004, by:

Mail Service: Regular, first class United States mail, postage fully pre-paid, addressed to:

Jon Brakke
Vogel Law Firm
P.O. Box 1389
Fargo, ND 58107-1389

James M. Schultz
9593 South 260th Street
Hawley, MN 56549

Personal Service: By leaving the process with defendant or with an officer or agent of defendant at:

Residence Service: By leaving the process with the following adult at:

Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

Publication: The defendant was served as follows: [Describe briefly]

State Law: The defendant was served pursuant to the laws of the State of Minnesota. as follows: [Describe briefly]

Under penalty of perjury, I declare that the foregoing is true and correct.

6-10-04
Date

Rhanda Shaw
Signature

Rhanda Shaw
Print Name

Thorwaldsen, Malmstrom, Sorum, Wilson, LaFlair & Majors
1105 Hwy. 10 E., P.O. Box 1599
Business Address

Detroit Lakes, MN 56502
City State Zip

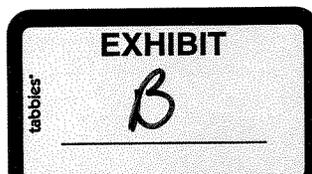
UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)
) Bky No. 04-60289
James M. Schultz,)
)
Debtor.)
)
_____)
)
CMGB Farms,)
) Adversary No. 04-6041
Plaintiff,)
)
vs.) **DEFENDANT'S RESPONSES TO**
) **PLAINTIFF'S INTERROGATORIES**
James M. Schultz, d/b/a) **AND REQUEST FOR PRODUCTION**
Northland Ag Builders,) **OF DOCUMENTS**
)
Defendant.)
_____)

COMES NOW, James M. Schultz, d/b/a Northland Ag Builders, hereby responds to Plaintiff's Interrogatories and Request for Production of Documents, Set I, as follows:

1. Regarding the assertion made in paragraph 3 of Defendant's Answer, describe with specificity the factual basis for Defendant's claim that Plaintiff's claim is against an entity by the name of Northland Ag Builders, LLC and not against the Defendant in his individual capacity. You are required to annex to your answers hereto copies of all documents, correspondence, memorandum, reports and/or data compilations maintained in any form or format establishing or respecting said facts.

RESPONSE: Northland Ag Builders is a limited liability company organized under the laws of the State of Minnesota and registered with the Minnesota Secretary of State. The certificate of organization for Northland Ag Builders, LLC was issued by the Minnesota Secretary of State on May 8, 2000. The proposal and invoice for the



transaction that is at issue in this adversary proceeding listed the seller as Northland Ag Builders. Copies of the proposal and invoice are annexed as exhibits to Plaintiff's Answers to Defendant's Interrogatories and Demand for Production of Documents, Set I. The certificate of organization for Northland Ag Builders, LLC is a public record that can be obtained by Plaintiff from the office of the Minnesota Secretary of State.

2. State with specificity in what manner the Defendant informed Plaintiff that it was doing business with a limited liability company, rather than with the Defendant individually. You are required to annex to your answers hereto copies of all documents, correspondence, memorandum, reports and/or data compilations maintained in any form or format establishing or respecting said facts.

RESPONSE: See Response to Interrogatory and Request for Production of Document No. 1 above.

3. With respect to the statements made in paragraph 6 of Defendant's Answer to Plaintiff's Complaint, please describe with specificity the factual basis for Defendant's assertion that Plaintiff remitted funds to an entity named Northland Ag Builders, LLC. You are required to annex to your answers hereto copies of all documents, correspondence, memorandum, reports and/or data compilation maintained in any form or format establishing or respecting said facts.

RESPONSE: The check issued to the Defendant was made payable to Northland Ag Builders, Inc. The check was deposited in a bank account maintained by Northland Ag Builders. The defendant is attempting to locate the statement documenting deposit of the check in the account of Northland Ag Builders.

4. With respect to the allegations in paragraph 7 of Defendant's answer to Plaintiff's Complaint, describe with specificity the factual basis for Defendant's claim that

Northland Ag Builders, LLC made payment to the manufacturer of certain goods that Plaintiff wished to purchase from Northland Ag Builders, LLC. You are required to annex to your answers hereto copies of all documents, correspondence, memorandum, reports and/or data compilations maintained in any form or format establishing or respecting said facts.

RESPONSE: Payment to the manufacturer was made in the name of Northland Ag Builders. The Defendant is attempting to locate a copy of the subject check.

5. With respect to the allegations in paragraph 6 of Defendant's Counterclaim, state with specificity the factual basis for Defendant's claims as asserted in said paragraph. You are required to annex to your answers hereto copies of all documents, correspondence, memorandum, reports and/or data compilations maintained in any form or format establishing or respecting said facts.

RESPONSE: Annexed hereto as Exhibit A is a copy of the indictment issued in criminal proceedings filed against the Debtor pending in District Court for the County of Clay, State of Minnesota. Said action follows a criminal proceeding initiated in Norman County District Court that was based in part on the claim set forth by Plaintiff in the instant adversary action. After the Norman County case was dismissed, it is believed that the Plaintiff prevailed on the Clay County, Minnesota attorney to initiate criminal proceedings in Clay County District Court.

Dated this _____ day of August, 2004.

James M. Schultz

Northland Ag Builders
 9593 260th St. So.
 Hawley, MN 56549
 218-937-5122

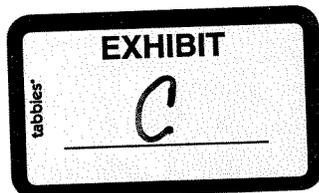
Date
 4/10/2002

Name / Address
 CMGB Farms
 3060 280th Ave
 Gary, MN 56545

Proposal

Qty	Description	Cost/unit	Sale Price
2	3607 Conrad American bin, (24,200 bushels, weight 13,373 lbs. tensile strength 72,000 psi, yield strength 50,000 psi, 3,600 lbs peak load)	7,722.50	15,445.00T
2	Foundation base sealant for 36" dia bin	82.50	165.00T
10	44" inside wall ladder	16.50	165.00T
12	44" outside wall ladder	16.66667	200.00T
2	Conrad 36' diameter "Hawkeye" No-Fines aeration floor with perforated wall flashing	1,712.50	3,425.00T
920	12" x 17 gauge floor support legs	1.92391	1,770.00T
2	Low Speed Centrifugal fan transition	215.00	430.00T
2	Conrad American 10 hp x 1 phase Low Speed Centrifugal fan with Baldor motor and starter control	1,407.50	2,815.00T
18	15" x 15" elbow roof vent	42.22222	760.00T
18	Punched roof sheet for vents	7.22222	130.00T
2	Grain Handler 8" x 36' diameter bin x 3 sump Powersweep with 4:1 gear reduction Rack & Pinion control gates, 12" x 12" grated hoppers, direct connect transmission	1,860.00	3,720.00T
2	Grain Handler 8" Heavy Duty Powerhead with one pin motor mount removal, over-center belt tension lever and hangerbearing on output shaft	305.00	610.00T
2	TEFC 7.5 hp x 1 phase farm duty "High Torque" electric motor with 2 groove motor pulley	377.50	755.00T
1	Freight	800.00	800.00
	Subtotal		31,190.00
	Sales tax	5.00%	1,519.50
	Not included: 1. Labor to install		
	Terms: 1. Total Price of \$32,709.50 with bid deposit of \$26,105.00 with order. 2. Remaining material payment due by June 31, 2002	0.00%	0.00
Thank you for your business.		Total	\$32,709.50

Signature _____



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: James M. Schultz,)	
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Debtor,)	Bky No.: 04-60289-DDO
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CMGB Farms,)	
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Plaintiff,)	Chapter Seven
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vs.)	
)	Adv. Proc. No.: 04-6041
James M. Schultz)	
)	
Defendant.)	

ORDER

On November 16, 2004, at 1:00 p.m., Defendant James M. Schultz, d/b/a Northland Ag Builders brought its Motion for Summary Judgment on for hearing. Carl Malmstrom appeared for Plaintiff. Jon Brakke appeared for Defendant James M. Schultz, d/b/a Northland Ag Builders. After review of the pleadings and after consideration of the arguments of counsel, IT IS HEREBY ORDERED, Defendant James M. Schultz, d/b/a Northland Ag Builders' Motion for Summary Judgment is GRANTED and Plaintiff's Complaint is hereby dismissed with prejudice.

Honorable Dennis D. O'Brien
United States Bankruptcy Judge