

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

In re: ) Bky No. 04-60106 DDO  
)  
Daniel S. Miller, )  
Debtor. )  
)  

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Daniel S. Miller, ) Adv. No. 04-6043  
)  
Plaintiff, )  
)  
vs. )  
)  
Daniel Altepeter, Darral Altepeter, John )  
Altepeter, Peter Anderson, Roger Anderson, )  
Doug Barth, Chuck Bina, Bremer Bank ) **SEPARATE ANSWER OF**  
National Association, Monte Casavan, ) **JOHN SPINA TO**  
Gregory Driscoll, Dubuque Farming ) **PLAINTIFF'S AMENDED**  
Association, Emmert Farms, Farmers Coop ) **COMPLAINT**  
Grain & Seed, Kyle Haake, Roger Hagen, )  
Russ Halverson, Gary Hoper, J & J Gust )  
Farms, J.O. Thorson Farms, Inc., JETN Farms, LLP, )  
Gorman Johnson, Loren Johnson, Walter )  
Johnson, Dan Juneau, Joe Juneau, Charles )  
Kaml, Key West Farms, KO-R Farms, Inc., )  
K-Team, Gary Larson, Lonesome Land, )  
Matco, Inc., David McCollum, McWalter )  
Farms, Inc., James A. Narum, Bradley Nelson, )  
Doyle Nelson, Jeremy J. Nelson, Patrick )  
Noll, Erik Nymann, Nymann Farms, Ose Farms )  
a/k/a Joseph T. Ose, Burl Peckman, Gary )  
Peckman, Pederson Brothers, Peterson )  
Farms, PM Farming, Inc., Hans Reinhardt, )  
Darrold Rodahl, Larry Roisland, Gary Salentiny, )  
Dennis Salentiny, Richard Salentiny, Andrew )  
Spaeth, John Spina, Howard Steinmetz, Matt )  
Thorson, Ronald Thorson, Tri-Mack Potato, Inc., )  
United Grain & Livestock, Erwin Vanek, Dan )  
Wichterman, Steven D. Wollin and Gregory )  
Wollin, )  
)  
Defendants. )

John Spina, as and for his Answer to Plaintiff's Amended Complaint, states as follows:

I.

Unless specifically admitted, this answering Defendant denies each and every allegation in Plaintiff's Amended Complaint.

II.

Admits the allegations in paragraph 1 of Plaintiff's Amended Complaint.

III.

Admits the allegations in paragraph 2 of Plaintiff's Complaint insofar as it is alleged that this answering Defendant is an individual who claims ownership with respect to grain or grain proceeds in Plaintiff's possession as of the date of the commencement of Plaintiff's bankruptcy case.

IV.

Admits the allegations in paragraphs 3, 4, 5, 6, 7, 8 and 9 of Plaintiff's Amended Complaint.

V.

Lacks sufficient information to form a belief as to the true or falsity of the allegations in paragraphs 10, 11, 12 and 13 of Plaintiff's Amended Complaint, and thus denies the same, placing Plaintiff on his strict proof in connection therewith.

VI.

Admits the allegations in paragraphs 14 and 15 of Plaintiff's Amended Complaint.

VII.

Denies the allegations in paragraph 16 of Plaintiff's Amended Complaint.

VIII.

Admits the allegations in paragraph 17 of Plaintiff's Amended Complaint.

IX.

Admits the allegations in paragraph 18 of Plaintiff's Amended Complaint insofar as it is asserted that this answering Defendant may at various times have entered into contracts with Plaintiff for the sale of grain. However, this answering Defendant never contracted to sell to the Plaintiff the crops referenced in the Interested Party's Claim filed by this answering Defendant.

X.

Specifically denies the allegations in paragraph 19 of Plaintiff's Amended Complaint insofar as it refers to the crops referenced on the Interested Party's Claim filed by this answering Defendant.

XI.

Specifically denies the allegations of paragraphs 20, 21, 22, 23 and 24 of Plaintiff's Amended Complaint insofar as they relate to the crops referenced in the Interested Party's Claim filed by this answering Defendant.

XII.

Admits the allegations in paragraph 25 of Plaintiff's Amended Complaint other than as to the crops referenced in the Interested Party's Claim filed by this answering Defendant.

XIII.

Specifically denies the allegations in paragraphs 26 and 27 of Plaintiff's Amended Complaint insofar as the same concern the crops referenced in the Interested Party's Claim filed by this answering Defendant.

XIV.

Admits the allegations in paragraph 29 of Plaintiff's Amended Complaint to the extent it is alleged therein that this answering Defendant did not make storage payments to the Plaintiff with respect to the crops referenced in the Interested Party's Claim filed by this answering Defendant.

XV.

Lacks sufficient information to form a belief as to the truth or falsity of the allegations in paragraphs 30 through 101 of Plaintiff's Amended Complaint, and thus, to the extent said allegations concern this answering Defendant, he denies the same, placing Plaintiff on his strict proof in connection therewith.

XVI.

Admits the allegations in paragraph 102 of Plaintiff's Amended Complaint to the extent it is alleged therein that this answering Defendant filed an Interested Party's Claim

with respect to 28,111.12 bushels of wheat owned by this answering Defendant which this answering Defendant stored with the Plaintiff. The allegations in paragraph 102 of Plaintiff's Amended Complaint are further admitted with respect to the fact that this answering Defendant filed a claim against Plaintiff's grain buyers bond. However, to the extent said claim included amounts related to the crops referenced in the Interested Party's Claim filed by this answering Defendant, the claim on the bond was intended only to preserve the rights and remedies of this answering Defendant in the event of an adverse determination on this answering Defendant's Interested Party's Claim and/or in the event Plaintiff had unlawfully sold the crop owned by this answering Defendant prior to Plaintiff's bankruptcy filing, with the proceeds being converted by the Plaintiff.

#### XVIII.

Lacks sufficient information to form a belief as to the truth or falsity of the allegations in paragraphs 103 through 116 of Plaintiff's Amended Complaint, and thus, to the extent said allegations concern this answering Defendant, he denies the same placing Plaintiff on his strict proof in connection therewith.

#### XIX.

Specifically denies the allegations in paragraphs 117 through 124 of Plaintiff's Amended Complaint with respect to the crops referenced in the Interested Party's Claim filed by this answering Defendant.

XX.

Lacks sufficient information to form a belief as to the truth or falsity of the allegations in paragraphs 125 through 138 of Plaintiff's Amended Complaint, and thus, to the extent said allegations concern this answering Defendant, he denies the same placing Plaintiff on his strict proof in connection therewith.

XXI.

Plaintiff's Amended Complaint fails to state a cause of action upon which relief can be granted.

XXII.

If, with respect to the crops referenced in the Interested Party's Claim filed by this answering Defendant, there were discussions respecting sale of said crops to the Plaintiff, the same were premised on express or implied representations by the Plaintiff that Plaintiff was solvent and had the ability to immediately pay for any crops purchased from the Defendant. At all times, such express and implied representations were false and fraudulent, thus, voiding any sale agreement negotiated and preventing title to the subject crops from passing to the Plaintiff.

XXIII.

Pending further discovery, this answering Defendant reserves all affirmative defenses available to him.

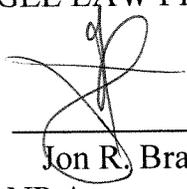
WHEREFORE, this answering Defendant prays for judgment on Plaintiff's Amended

Complaint as follows:

1. For the dismissal of Plaintiff's Amended Complaint with prejudice and the denial of any relief thereunder.
2. For a determination that the Defendant is the owner of the crops referenced in the "Interested Party's Claim" filed by this answering Defendant, with the Plaintiff to be ordered to immediately make payment to this answering Defendant for the value of said crops.
3. For his costs and disbursements incurred herein.
4. For such other and further relief as this Court deems just and equitable.

Dated this 2<sup>nd</sup> day of June, 2004.

VOGEL LAW FIRM

By: 

Jon R. Brakke MN ID #10765

218 NP Avenue

P. O. Box 1389

Fargo, ND 58107-1389

(701) 237-6983)

ATTORNEYS FOR DEFENDANT,  
JOHN SPINA

RE: Daniel S. Miller v. Daniel Altepeter, et al.  
Adversary Case No. 04-6043

STATE OF NORTH DAKOTA )  
 ) ss  
COUNTY OF CASS )

AFFIDAVIT OF SERVICE  
BY MAIL AND FAX

Holly A. Kittelson, being first duly sworn on oath, does depose and say: She is a resident of County of Clay, City of Moorhead, State of Minnesota, is of legal age and not a party to or interested in the above entitled matter.

On the June 28, 2004, your affiant served the following documents:

SEPARATE ANSWER OF JOHN SPINA TO PLAINTIFF'S COMPLAINT

by placing true and correct copies in envelopes addressed as follows and via facsimile:

Michael S. Dove  
Ryan R. Dreyer  
Gislason & Hunter  
P.O. Box 458  
New Ulm, MN 56073

and causing them to be placed in the mail at Fargo, North Dakota with first-class postage prepaid.

  
\_\_\_\_\_  
Holly A. Kittelson

Subscribed and sworn to before me this 28<sup>th</sup> day of June, 2004.

  
\_\_\_\_\_  
Notary Public

(SEAL)

