

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Bky No. 04-60106DDO

Daniel S. Miller,

Debtor.

Daniel S. Miller,

Plaintiff,

Adv. No. 04-6043

vs.

Daniel Altepeter, Darral Altepeter, John Altepeter, Peter Anderson, Roger Anderson, Doug Barth, Chuck Bina, Bremer Bank National Association, Monte Casavan, Gregory Driscoll, Dubuque Farming Association, Emmert Farms, Farmers Coop Grain & Seed, Kyle Haake Roger Hagen, Russ Halverson, Gary Hoper, J & J Gust Farms, J.O. Thorson Farm, 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.

**ANSWER, COUNTERCLAIM AND
CROSS-CLAIM OF ERIK NYMANN
AND NYMANN FARMS**

Defendants.

Erik Nymann individually and doing business as Nymann Farms as their Answer, Counterclaim and Cross-Claim to Plaintiff's Amended Complaint state and show to the Court as follows:

1. Except as specifically hereinafter admitted, denies each and every allegation of said Complaint.

2. Admits Paragraphs 1 through 9, 14, 15, 16, 17, 32, 83, 136 and 137 of said Complaint.

3. States that they lack sufficient information to form a belief as to the truth of the averments in Paragraphs 10 through 13, 22 through 31, 33 through 82, and 84 through 116 to be able to admit or deny them.

4. As to these answering Defendants and their dealings with the Plaintiff, denies Paragraphs 18 through 21, 128, 134, 135 and 138.

5. As to the allegations in Paragraphs 118 through 124, which allegations include the vague and ambiguous term grain, these answering Defendants cannot form a responsive pleading and admit or deny said allegations.

6. On information and belief admits the allegations contained in Paragraphs 126, 129 through 132, and admits Paragraph 127, except as to the amount of bushels that were removed, and admit Paragraph 133 as to the amount of bushels removed.

7. That all the grain referenced in said Complaint that was delivered by Erik Nymann and Nymann Farms was pursuant to a Storage Agreement of September 24, 2003, which Storage Agreement is attached to this Answer, Counterclaim and Cross-Claim as Exhibit

A and incorporated herein. The Storage Agreement specifically states in part that Nymann Farms is only renting storage for its wheat production, that it was a storage agreement with no binding sales contract, and the grain would not be subject to any legal claims.

8. Erik Nymann and Nymann Farms further allege that the grain that was removed by Defendant JETN Farms, as set forth in Paragraphs 126 through 132 of said Complaint, was in fact owned by Erik Nymann and Nymann Farms, and that Plaintiff and these answering Defendants timely filed theft reports with the police authorities relative to said removal.

9. That Erik Nymann and Nymann Farms admits that it removed various bushels of wheat from Daniel Miller's Tilden storage site, which removal was with the consent and participation of Plaintiff, and alleges further that their removal of said wheat was completely lawful and in accordance with the Storage Agreement entered into on September 25, 2003 with the Plaintiff.

10. Erik Nymann and Nymann Farms allege further that in addition to the grain owned by Erik Nymann and Nymann Farms that was delivered to Plaintiff's Tilden site pursuant to the Exhibit A Storage Agreement, and subsequently removed by Nymann Farms, that there remains unaccounted for approximately 85,678.96 bushels of spring wheat having a value of approximately \$333,291.15, approximately 14,187.22 bushels of winter wheat, having a value of approximately \$54,195.18 and approximately 25,646.58 bushels of soybeans having a value of approximately \$172,088.02 all of said wheat and soybeans not being accounted for .

11. Plaintiff's Amended Complaints fails to state a cause of action against Kevin Nymann and Nymann Farms upon which relief can be granted.

12. That Plaintiff's Complaint as to Erik Nymann and Nymann Farms fails due to waiver, estoppel, fraud and illegality.

COUNTERCLAIM

Defendant Erik Nymann and Nymann Farms for their Counterclaim state and allege as follows:

13. Re-allege each and every allegation as set forth in their Answer above.

14. That the wheat that Erik Nymann and Nymann Farms delivered to the Plaintiff's Tilden site pursuant to the Exhibit A Storage Agreement at all times material herein remained the sole and exclusive property of Erik Nymann and Nymann Farms.

15. That the wheat that Erik Nymann and Nymann Farms delivered to the Plaintiff's Tilden site pursuant to the Exhibit A Storage Agreement was not at any time owned by the Plaintiff, and Plaintiff had no ownership interest in said wheat.

16. That the wheat that Erik Nymann and Nymann Farms delivered to the Plaintiff's Tilden site pursuant to Exhibit A Storage Agreement Plaintiff was a landlord relative to said wheat, and only legally entitled to receive rent at the \$.02 per bushel per month as set forth in the Storage Agreement Exhibit A.

17. That Erik Nymann and Nymann Farms are entitled to a declaration of this Court that as to the wheat that Erik Nymann and Nymann Farms delivered to the Plaintiff's Tilden site pursuant to Exhibit A Storage Agreement, that Erik Nymann and Nymann Farms were the sole and exclusive owners of said wheat, and that the Plaintiff and all Defendants had no interest in the wheat that was stored at the Plaintiff's Tilden site pursuant to the Plaintiff's Storage Agreement Exhibit A.

CROSS-CLAIM

Defendant Erik Nymann and Nymann Farms for its cross-claim states and alleges as follows:

18. Re-alleges each and every allegation as set forth in its Answer and Counterclaim above.

19. That on information and belief, JETN Farms, LLP removed spring wheat from the Plaintiff's Tilden storage site, and the spring wheat so removed rightfully belonged to Erik Nymann and Nymann Farms, which was approximately 46,000 bushels of spring wheat.

20. That on information and belief, JETN Farms, LLP have converted spring wheat owned by Erik Nymann and Nymann Farms, in amounts as shall be subsequently proven herein, all to Erik Nymann and Nymann Farms' damage.

21. That neither the Plaintiff nor any other of the Defendants named herein have any right, title, or interest to any of Erik Nymann and Nymann Farms' winter and spring wheat that was stored at the Plaintiff's Tilden pursuant to the Exhibit A Storage Agreement of September 24, 2003.

WHEREFORE, Erik Nymann and Nymann Farms pray judgment of this Court as follows:

1. Dismissing Plaintiff's Complaint against them with prejudice;

2. Ordering Judgment in its favor against JETN Farms, LLP, on their cross-claim for the reasonable value of the spring wheat belonging to Nymann Farms which was converted in amounts that will be proven at trial;
3. Declaring that the Plaintiff and all Defendants have no interest in the spring wheat and winter wheat belonging to Erik Nymann and Nymann Farms that was stored at the Plaintiff's Tilden site pursuant to the Storage Agreement of September 24, 2003;
4. For Erik Nymann and Nymann Farms' attorney's fees, costs and disbursements incurred herein; and
5. For such further relief as the Court deems just and equitable.

Dated this 9th day of July, 2004.

/e/ Robert J. Feigh
Robert J. Feigh (#28629)
Phillip L Kunkel (#58981)
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Attorneys for Defendants Erik Nymann and
Nymann Farms

EXHIBIT

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1A

Storage Agreement

Between Daniel Miller of Danielson Grain
and Erik, Melisa, Ida, & Martin Nymann of
Nymann Farms.

Nymann Farms is renting storage for 2003
wheat production at this location:
Tilden Grain Facility, Tilden township
NE1/4 of NE1/4 Twp. 149-Range 44 Section 22

Spring Wheat total: 221,585.13 Bushels
Winter Wheat total: 88,930.88 Bushels

The Rent is 2 cent/Bushel per month starting
September 1, 2003

Spring Wheat is stored in Quonset, Barn, and bin no. 6
Winter Wheat is stored in bin no. 10 and 11.

See attachment of building placement. This Grain cannot
in any way, form or shape be subject to any legal claims.
This is strictly a storage agreement with a no binding
sales contract.

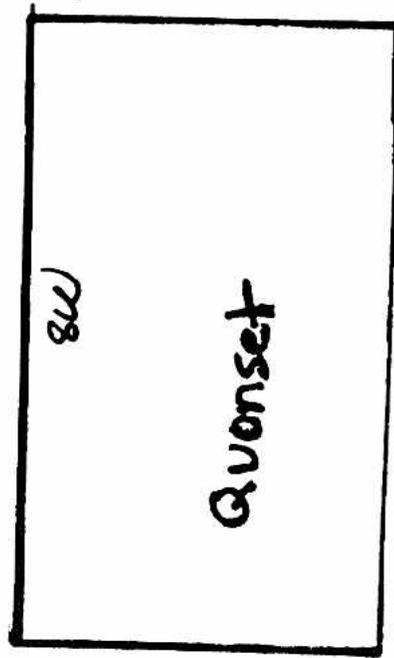
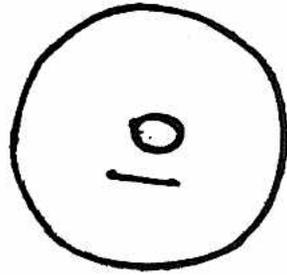
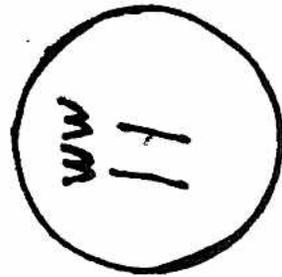
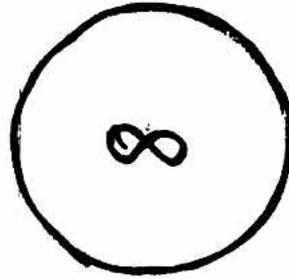
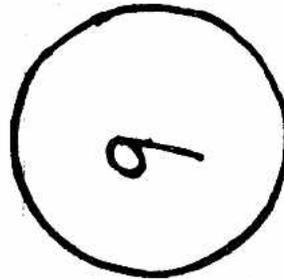
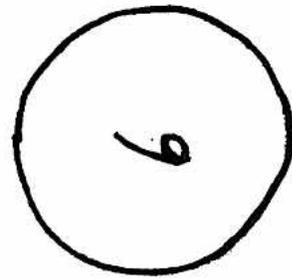
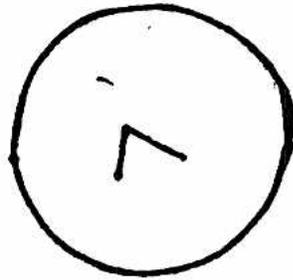
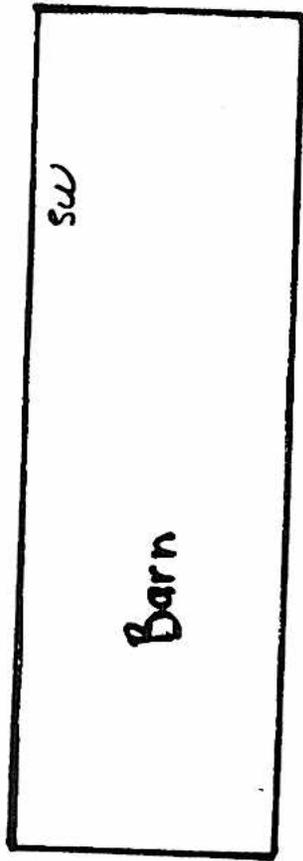
Danielson Grain, Daniel Miller Daniel L Miller 9/24/03
Nymann Farms, Erik Nymann Erik Nymann 9/24 03

Hidden Township

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NE 1/4 of NE 1/4

Twp 149 Range 44
Section 22



SERVICE LIST

Daniel S. Miller, Debtor and Plaintiff, vs. Daniel Altepeter, et al
Bky. No. 04-60106
Adv. No. 04-6043
Our File No. 99108

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