

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION**

Bky No. 04-60106 DDO

In re:

Daniel S. Miller, )  
 )  
 Debtor. )  
 )  
 Daniel S. Miller, )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Daniel Altepeter, et al., )  
 )  
 Defendants. )

Adv. No. 04-6043

**ANSWER, COUNTERCLAIM  
AND CROSS-CLAIM OF  
BREMER BANK,  
NATIONAL ASSOCIATION**

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Bremer Bank, National Association (hereinafter "Bremer Bank") as and for its Answer, Counterclaim and Cross-Claims avers, alleges, answers and denies as follows:

1. This answering Defendant denies each and every allegation, matter and thing contained in Plaintiff's Amended Complaint, except as may hereinafter be specifically admitted, qualified, or explained.
2. Upon information and belief, the allegations in paragraph 1 of Plaintiff's Amended Complaint are admitted.
3. With respect to the allegations in paragraph 2 of Plaintiff's Amended Complaint, it is admitted only that this answering Defendant is an individual or entity that has served a claim of ownership to various crop amounts and types of grain and to grain proceeds in Plaintiff's possession at the time of commencement of the bankruptcy case or from the monies received or to be received from the liquidation of crops or grain pursuant to the Court's Order for

liquidation; and remaining allegations in paragraph 2 are denied or denied for lack of knowledge and information to form a believe as to there truth.

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

5. Defendant denies, for lack of knowledge or information, the allegations set forth in paragraphs 10, 11, 12, 13, 14 and 15.

6. This answering Defendant specifically denies the allegations set forth in paragraph 16 of Plaintiff's Amended Complaint; and without releasing the Plaintiff of his burden of proof, this answering Defendant alleges that Plaintiff represented to, among others, PM Farming, Inc., Bremer Bank and the United States Department of Agriculture that Plaintiff was in the business of storing grain or crops that is described in this answering Defendant's Interested Party's Claim.

7. With respect to paragraph 17 of Plaintiff's Amended Complaint, this answering Defendant denies those allegations for lack of knowledge or information.

8. With respect to paragraph 18 of Plaintiff's Amended Complaint, insofar as it is alleged that this answering Defendant entered into any contract with Plaintiff to sell grain to Plaintiff, this answering Defendant specifically denies those allegations as this answering Defendant never contracted to sell to Plaintiff and, specifically, did not contract with Plaintiff to sell, nor did it authorize Plaintiff to sell, the crops referenced in this answering Defendant's Interested Party's Claim; and this answering Defendant lacks knowledge or information regarding the remaining allegations of this paragraph.

9. With respect to paragraph 19 of Plaintiff's Amended Complaint, this answering Defendant specifically denies those allegations insofar as they refer to crops referenced in this

answering Defendant's Interested Party's Claim and this answering Defendant lacks knowledge or information regarding the remaining allegations of that paragraph.

10. With respect to paragraphs 20, 21, 22, 23, and 24 of Plaintiff's Amended Complaint, this answering Defendant specifically denies those allegations insofar as they relate to any crops or grain referenced in this answering Defendant's Interested Party's Claim; and without relieving the Plaintiff of its burden of proof in any respect with Answering Defendant further alleges any attempted sale and/or transfer of ownership of any crops or grain that this answering Defendant had a perfected security interest therein was attempted without the authorization and consent of this answering Defendant and any alleged right therein by Plaintiff is subordinate to the rights and interests of this Answering Defendant.

11. With respect to the allegations contained in paragraph 25 of Plaintiff's Amended Complaint, this answering Defendant denies those allegations for lack of knowledge or information with respect thereto.

12. This answering Defendant specifically denies the allegations of paragraphs 25, 26, 27, and 28 of Plaintiff's Amended Complaint insofar as they relate to crops and grain referenced in this answering Defendant's Interested Party's Claim.

13. With respect to paragraphs 30 through 39 of Plaintiff's Amended Complaint, this answering Defendant denies for lack of knowledge or information all of the allegations therein.

14. This answering Defendant admits the allegations of paragraph 40 of Plaintiff's Amended Complaint that this answering Defendant filed an Interested Party's Claim with Debtor's counsel, that this Answering Defendant has a perfected first priority security interest in 29,721.24 bushels of spring wheat and 18,106.60 bushels of soybeans and any proceeds thereof that was and is possession of the Plaintiff; and without relieving the Plaintiff of its burden of

proof in any respect it is further alleged that this answering Defendant duly filed an Effective Financing Statement with the Minnesota Secretary of States Office; that this answering Defendant never authorized or consented to any sale or transfer of ownership interest in its secured collateral to Plaintiff; and that Plaintiff did not remit payment to this Answering Defendant or any such attempted sale or transfer.

15. With respect to paragraphs 41 through 116 of Plaintiff's Amended Complaint, this answering Defendant lacks knowledge or information regarding those allegations and pending completion of discovery, denies the same.

16. With respect to paragraph 117 of Plaintiff's Amended Complaint, this answering Defendant incorporates by reference its prior answers to the allegations in paragraphs 1 through 116 of the Amended Complaint.

17. This answering Defendant specifically denies the allegations of paragraph 118 through 124 of Plaintiff's Amended Complaint insofar as those allegations relate to the crops or grain referenced in this answering Defendant's Interested Party's Claim filed with Debtor's counsel.

18. With respect to paragraph 125, this answering Defendant incorporates prior responses to paragraphs 1 through 124 of Plaintiff's Amended Complaint.

19. With respect to paragraphs 126, 127, 128, 128, 130 and 131, this answering Defendant admits, states and alleges that on or about January 23, 2004 and January 24, 2004, Defendant JETN Farms LLP damaged a storage facility in the possession or control of Daniel Miller and that JETN Farms LLP removed wheat consisting of approximately 30,000 bushels, which wheat in total or in part this answering Defendant is informed and believes was owned by PM Farming, Inc., and in which this answering Defendant had a first priority security interest

therein, and that JETN Farms LLP has refused to return such grain or crop or its proceeds to this answering Defendant; and the remaining allegations of said paragraphs are denied or denied for lack of knowledge or information.

20. With respect to paragraphs 132, 133, 134, 135, 136, 137 and 138, this answering Defendant admits, states and denies only that some or all of the wheat that Plaintiff alleges Defendant Nymann Farm removed from the Tilden grain facility site on the northeast quarter of the northeast quarter of Section 22 of Tilden Township, Polk County, Minnesota, may have been owned by PM Farming, Inc., and in which this answering Defendant had a first priority security interest therein; and the remaining allegations therein are denied and denied for lack of knowledge and information.

21. That the Complaint fails to state a claim(s) against this answering Defendant upon which relief can be granted and that the Amended Complaint, and each and every claim therein, made against this answering Defendant should be dismissed with prejudice.

22. Pending completion of discovery, this answering Defendant does assert and preserve the defenses as set forth in Rules 12 and 19 of the Rules of Civil Procedure.

23. Pending completion of discovery, this answering Defendant asserts and preserves all of the affirmative defenses as set forth in Rule 8 of the Rules of Civil Procedure.

24. That the Plaintiff waived, is estopped, and/or is barred from recovery against this answering Defendant by Plaintiff's own misconduct.

25. This answering Defendant alleges that the Complaint and any claims for relief alleged therein are barred by the doctrine of unclean hands and latches.

26. That the wrongful conduct of Plaintiff relative to the grain or crops of PM Farming, Inc., including such grain and crop as to which this answering Defendant had a security

interest in, was such that this answering Defendant is entitled to enforce a constructive trust or equitable lien upon the grain and crops in the possession of the Plaintiff at the time of commencement of the bankruptcy case and any and all proceeds thereof; upon any monies in possession of the Plaintiff at the commencement of the bankruptcy case; and/or upon any monies and proceeds received or to be received from the liquidation of crops or grain pursuant to the Court's Order for liquidation.

27. With respect to the crops and grain referenced in this answering Defendant's Interested Party's Claim, if there were discussions respecting the sale of said crops and grain to Plaintiff, any such alleged sale or transfer was done without the authorization or consent of this Answering Defendant and was fraudulent, constructively or actually, in that among other things, the transfer was committed by Plaintiff with actual intent to hinder, delay, or defraud PM Farming, Inc. and/or this answering Defendant; was premised upon express or implied representations by Plaintiff that Plaintiff was solvent and had the ability to immediately pay for any crops purchased; and for such other and further reasons as are more fully developed in discovery in this case, such that this answering Defendant is entitled to an avoidance of the transfer to the extent necessary to satisfy this answering Defendant's claim and/or an attachment, is entitled to an equitable lien or other provisional remedy against the asset transferred or the other crop property of the Plaintiff and is entitled to an avoidance of any sale agreement and the avoidance of any transfer of title of the crops to Plaintiff.

### **COUNTERCLAIM**

Defendant Bremer Bank, as and for its Counterclaim states and alleges as follows:

1. Bremer Bank re-alleges each and every allegation as set forth in their Answer above and as set for in their Interested Party's Claim.

2. That Bremer Bank is entitled to a declaration of this Court that Plaintiff entered into a bailment relationship with regards to the crops and grain referenced in Bremer Bank's "Interested Party's Claim" and that Plaintiff has no ownership claims or right to such crops or grain; that this Answering Defendant had and has a superior claim and right to that of the Plaintiff or any of the other parties hereto to the possession of the crops and grain referenced in this Answering Defendant's "Interested Party's Claim," in any of the comparable crops or grain in possession of Plaintiff at the time of the initiation of the bankruptcy proceeding and/or in any cash or proceeds thereof; and determining that any claim of right to such crops or proceeds by the plaintiff or any of the other named defendants herein is subordinate to that of this Answering Defendant; and/or that this Answering Defendant is entitled to receive and Plaintiff be ordered to make immediate payment to this answering Defendant for the value of crops and grain identified in this Answering Defendant's "Interested Party's Claim" or their proceeds from the cash grain proceeds or monies that Plaintiff had on hand at the time of filing of the filing of the bankruptcy or from the monies received or to be received from the liquidation of crops or grain pursuant to the Court's Order for liquidation.

### **CROSS-CLAIMS**

Defendant, Bremer Bank, for its cross-claims against Defendants JETN Farms, LLP; Erik Nymann; and Nymann Farms states and alleges as follows:

1. That on or about January 23, 2004 and January 24, 2004, and/or other dates and times, Defendant Bremer Bank is informed and believes and thereon alleges that JETN Farms, LLP and together with the assistance of others, did negligently, intentionally and/or maliciously interfere with, convert and deprive Bremer Bank of the use and possession of crops in which Bremer Bank had a security interest in by wrongfully removing approximately 30,000 bushels from a

grain storage structure(s) on the northeast quarter of the northeast quarter of Section 22 of Tilden Township, Polk County, Minnesota and that some or all of such crop(s) was owned by PM Farming, Inc. and that Defendant Bremer Bank had a first priority security interest in such crop and that JETN Farms, LLP was without right or authority to take and remove such crops.

2. That on or about December, 2003 and other dates and times, Defendant Bremer Bank is informed and believes and thereon alleges that Defendants Erik Nymann, Nymann Farms and together with the assistance of others, did negligently, intentionally and/or maliciously interfere with, convert and deprive Bremer Bank of the use and possession of crops in which Bremer Bank had a security interest in by wrongfully removing crops from storage structures on the northeast quarter of the northeast quarter of Section 22 of Tilden Township, Polk County, Minnesota and that some or all of such crops were owned by PM Farming, Inc. and in which crops Defendant Bremer Bank had a first priority security interest.

3. That Defendants JETN Farms, LLP, Erik Nymann and Nymann Farms are indebted to Bremer Bank for the value of the crops taken that Bremer Bank had a security interest therein.

WHEREFORE, this answering Defendant prays for judgment as follows:

1. For the denial of any relief, award or determination in favor of Plaintiff under its Amended Complaint as against this Answering Defendant and dismissal of any claims for relief therein with prejudice;

2. For a judgment determining, among other things:

(a) determining that Plaintiff entered into a bailment relationship with regards to the crops and grain referenced in this Answering Defendant's "Interested Party's Claim" and that Plaintiff has no ownership claims or right to such crops or grain;

(b) determining that this Answering Defendant had and has a superior claim and right to that of the Plaintiff or any of the other parties hereto to the possession of the crops and grain referenced in this Answering Defendant's "Interested Party's Claim," in any of the comparable crops or grain in possession of Plaintiff at the time of the initiation of the bankruptcy proceeding and/or in any cash or proceeds thereof; and determining that any claim of right to such crops or proceeds by the plaintiff or any of the other named defendants herein is subordinate to that of this Answering Defendant; and/or

(c) determining that this Answering Defendant is entitled to receive and Plaintiff be ordered to make immediate payment to this answering Defendant for the value of crops and grain identified in this Answering Defendant's "Interested Party's Claim" or their proceeds from the cash grain proceeds or monies that Plaintiff had on hand at the time of filing of the filing of the bankruptcy or from the monies received or to be received from the liquidation of crops or grain pursuant to the Court's Order for liquidation.

3. For entry of judgment in favor of Bremer Bank and against Defendants JETN Farms, LLP.; Erik Nymann; and/or Nymann Farms, for conversion or taking of Bremer Bank's secured collateral, all in an amount in excess of \$50,000.

4. For this answering Defendant's costs and disbursements and attorneys fees as incurred herein and as is allowed by law.

5. For such other and further relief as the Court deems just and equitable.

DATED this 14<sup>th</sup> day of July 2004.

/e/ Allen J. Flaten

ALLEN J. FLATEN, ND ID #03865

Zimney Foster P.C.

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION**

Bky No. 04-60106 DDO

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Daniel S. Miller, )  
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 vs. )  
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 Daniel Altepeter, et al., )  
 )  
 Defendants. )

Adv. No. 04-6043

**AFFIDAVIT OF SERVICE BY MAIL**

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STATE OF NORTH DAKOTA )  
 )SS.  
COUNTY OF GRAND FORKS )

Roxanne L. Flom, being first duly sworn, deposes and says that on the 14<sup>th</sup> day of July, 2004, she served the following:

**Answer, Counterclaim and Cross-claim of Bremer Bank, National Association**

by placing a true and correct copy thereof in an envelope addressed as follows:

SEE ATTACHED SERVICE LIST

and depositing the same, with postage prepaid, in the United States mails at Grand Forks, North Dakota.

/s/ \_\_\_\_\_ Roxanne L. Flom \_\_\_\_\_  
Roxanne L. Flom

Subscribed and sworn to before me on this  
14<sup>th</sup> day of July, 2004.  
/s/ Janelle Klava  
Notary Public

**SERVICE LIST**

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

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