

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In RE:

Daniel S. Miller,
Debtor.

Bankruptcy No. 04-60106

Daniel S. Miller,
Plaintiff,

Adversary No. 04-6043

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 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, Burle
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, Steve D. Wollin and
Gregory Wollin,

Defendants.

ANSWER OF MCWALTER FARMS, INC.

McWalter Farms, Inc. by and through its undersigned attorney,
as and for its Answer to the Amended Complaint in the above
captioned proceedings states and alleges that:

1. The Complaint fails to state a claim or cause of action against this Defendant upon which relief can be granted.

1. This Answering Defendant, McWalter Farms, Inc., denies each and every allegation, statement, or assertion contained in the Amended Complaint except to the extent hereinafter specifically admitted, qualified or explained.

2. Admits the allegations contained in paragraphs 1, 3, 4, 5, 6, 7, 8, and 9 of the Amended Complaint.

3. This Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or veracity of the allegations contained in paragraphs 2, 10, 11, 12, 13, 15, 18, 22, 23, 24, 30, 33 - 75 (inclusive), and 77 - 138 (inclusive), therefore, to the extent relevant to the claims asserted against this Answering Defendant, the allegations contained in said paragraphs are denied.

4. This Answering Defendant denies allegations of paragraphs 16, 17, and 18 of the Amended Complaint.

5. As to the allegations of paragraph 31 of the Amended Complaint, this Answering Defendant admits that counsel for the Debtor/Plaintiff informed counsel for this Answering Defendant that there were no soy beans or canola in possession of the Debtor/Plaintiff at the time the bankruptcy petition was initially filed against the Debtor.

6. Notwithstanding allegations to the contrary, the Plaintiff did personally, or by and through agents, offer to store, and did store, grain for this Answer Defendant, and other similarly situated farmers, for free storage ranging from 60-30 days and charged \$0.02 per bushel per month storage thereafter

which storage payments were deducted, or to be deducted, from the proceeds realized on the sale of the grain when the sale price was established by this Answering Defendant, which usually was much later than the time of delivery of the grain to the Plaintiff/Debtor, or to his agent(s) for storage.

7. This Answering Defendant alleges that even after delivery of soy beans to the Plaintiff/Debtor, or his agent(s), this Answering Defendant retained ownership until essential terms of a contract of sale were agreed upon which terms included establishing a sale price for 14,264.43 bushels of soy beans delivered to the Plaintiff/Debtor in August, October, and December, 2003, having an aggregate value exceeding \$132,000.00.

8. The relationship between this Answering Defendant and Plaintiff/Debtor was a bailment relationship, as to soybeans delivered as aforesaid, until such time as the price of the soy beans was established and they were sold.

9. Denies that claims filed by this Answering Defendant with the Minnesota Department of Agriculture, or the Bankruptcy Court, constituted admissions against interest in that such claims were, and are, protective claims filed within the time limits established by law or regulations when this Answering Defendant suspected, but had no proof, the soy beans may have been converted until counsel for the Plaintiff/Debtor advised that there were no soy beans in the possession of the Plaintiff/Debtor at the time of bankruptcy filing, after the time had expired for filing a Complaint asserting non-dischargeability of the debt owed this Answering Defendant by Plaintiff/Debtor for conversion, or on other grounds.

WHEREFORE, this Answering Defendant, McWalter Farms, Inc., requests an order of this Court as follows:

A. Dismissing the purported Complaint of Plaintiff/Debtor with prejudice.

B. Determining that this Answering Defendant was the owner of 14,264.43 bushels of soy beans referenced in paragraph 76. of the Complaint.

C. Determining that this Answering Defendant entered into a bailment relationship with the Plaintiff/Debtor related to the soy beans referred to above.

D. Determining that title to the soy beans referred to above never passed to the Plaintiff/Debtor in that essential terms of a contract for a sale were not agreed upon when soy beans were delivered to the Plaintiff/Debtor and a bailment relationship thus existed with respect to said soy beans.

E. Granting McWalter Farms, Inc. its attorney's fees, costs, disbursements, and other expenses associated with defending this matter.

F. Granting McWalter Farms, Inc. such other and further relief as is just and equitable.

Dated this 14 day of July, 2004.

DEMARS & TURMAN,LTD.

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