

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY No.: 04-60106 DDO

Daniel S. Miller,

Debtor.

Daniel S. Miller,

Adv. No.: 04-6043

Plaintiff,

vs.

**MOTION BY TRI-MACK POTATO, INC.
FOR SUMMARY JUDGMENT**

Daniel Altepeter, et al.,

Defendants.

TO: THE ABOVE DEBTOR, AND ITS SPECIAL COUNSEL, MICHAEL DOVE, GISLASON & HUNTER, P.O. BOX 458, 2700 SOUTH BROADWAY, NEW ULM, MN 56073-0458.

1. Tri-Mack Potato, Inc. ("**Tri-Mack**") for its motion seeking an order granting summary judgment, states as follows and gives notice of hearing.

2. A hearing on this motion will be held before United States Bankruptcy Judge Robert J. Kressel in Courtroom 8 West, U.S. Courthouse and Federal Building, 300 South Fourth Street, Minneapolis, Minnesota 55415 on the 30th day of September, 2004 at 10:30 o'clock a.m.

Any response to this motion must be served and filed no later than September 20, 2004 if by mail, or served and filed no later than September 27, 2004 if by physical delivery. **IF NO RESPONSE**

OR OBJECTION IS SERVED AND FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

3. Tri-Mack moves for an order granting summary judgment against the Plaintiff in this adversary proceeding. Specifically, Tri-Mack moves for an order adjudicating that it is the owner of 14,612.71 bushels of wheat (the "**Wheat**") which are identified in paragraph 111 of the Plaintiff's Amended Complaint, and the proceeds of sale thereof.

4. On or about the time the Debtor filed his bankruptcy case, the Debtor acknowledged to Donald F. (Sonny) Mack, Jr., the principal of Tri-Mack, that the Wheat was the property of Tri-Mack and that the Debtor did not own the Wheat. Additionally, the Debtor filed a motion to abandon the Wheat in this case, a copy of which is attached as Exhibit B to the Affidavit of Donald F. (Sonny) Mack, Jr. filed herewith.

5. The factual basis in which this motion is brought is that Tri-Mack planted and harvested the Wheat, and delivered the same at its own expense and in its own truck to a grain storage facility owned by Dale Jeffrey. No agreement or contract was entered into by and between Tri-Mack and the Debtor with respect to the sale of the Wheat. Subsequent to placing it in the storage facility owned by Dale Jeffrey, Tri-Mack obtained a loan from the CCC on said Wheat, and the CCC effected and attached a seal to the storage facility and took the Wheat as collateral for said loan. All parties, including the Debtor and Dale Jeffrey, knew and understood that Tri-Mack was the owner of the Wheat, and had full power and authority to obtain a loan from the CCC and pledge the Wheat as collateral. Exhibit A to the Affidavit of Donald F. (Sonny) Mack, Jr. is a Consent for Storage/Storage Lien Waiver executed by Dale Jeffrey dated August 26, 2003. Subsequently, after the commencement of this case, the Debtor took possession of and sold the Wheat, and remitted approximately \$44,750.00 to the CCC as conditional payment of Tri-Mack's loan. The balance of

such sale proceeds, approximately \$10,000.00, was paid into the trust account of Gislason & Hunter. The Debtor has filed a motion in this case seeking approval of its abandonment of the Wheat.

6. This verified motion is brought upon the facts stated herein, the Affidavit of Donald F. (Sonny) Mack, Jr., the accompanying Memorandum of Law, and all the files and proceedings in this adversary proceeding and bankruptcy case.

7. In the event any testimony or evidence is properly offered as any hearing on this motion, Tri-Mack will call Sonny Mack as a witness to offer testimony and evidence. Any communication to Donald F. (Sonny) Mack, Jr. that is appropriate for discovery or otherwise may be made through the undersigned.

WHEREFORE, Tri-Mack respectfully requests that its motion for summary judgment be granted, and for such other relief as is just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

/e/ Brian F. Leonard

Dated: August 31, 2004

By _____
Brian F. Leonard, #62236
Matthew R. Burton, #210018
Attorneys for Tri-Mack Potato, Inc.
100 South Fifth Street
Suite 2500
Minneapolis, Minnesota 55402-1216
(612) 332-1030

08/30/04 11:57 FAX 218 773 3868
FROM LEONARD, O BRIEN ET AL

MASSE & LEONARD

02

MON 8/30/04 9:52 ST 9:51 NO 4260557889 1 2

VERIFICATION

I, Sonny Mack, am a principal of Tri-Mack Potato, Inc., and I state under penalty of perjury that the foregoing information is true and correct to the best of my information and knowledge.

Dated: 8/30, 2004

Sonny Mack (Sonny Mack)
Sonny Mack

2.FPD...ODMA/GPDWISE/GWDSTP/GWPOSTP.SIPLIB1310408.1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY No.: 04-60106 DDO

Daniel S. Miller,

Debtor.

Daniel S. Miller,

Adv. No.: 04-6043

Plaintiff,

vs.

**MEMORANDUM OF LAW OF
TRI-MACK POTATO, INC. IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Daniel Altepeter, et al.,

Defendants.

STANDARDS FOR SUMMARY JUDGMENT

The Plaintiff's Motion for Summary Judgment is brought under Bankruptcy Rule 7056, which incorporates Rule 56 of the Federal Rules of Civil Procedure. Under that rule, summary judgment may be granted if pleadings, answers to interrogatories, etc., show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

One of the principal purposes of this summary judgment rule is to isolate and dispose of factually unsupported claims or defenses. *Celotex Corp v. Catrette*, 477 U.S. 317 (1986). That case stated that entry of summary judgment is appropriate against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. 477 U.S. at 322. The moving party discharges its burden by demonstrating the absence of evidence to support the nonmoving party's position. 477 U.S. at 325. Once the moving party has done so, the burden shifts to the respondent to produce the evidence

to support its position. A nonmoving party may not rely on its mere pleadings. The nonmoving party must produce evidence that is significant, probative, and substantial. If the respondent fails to produce such evidence, or if the evidence produced does not have the probity and substance required to meet its initial burden at trial, then summary judgment shall be granted to the moving party. *Celotex Corp v. Catrette*, *supra*, at 324. *Johnson v. Enron Corp.*, 906 F.2d 1234 (8th Cir. 1990). *Krause v. Perryman*, 825 F.2d 346 (8th Cir. 1987). The summary judgment motion imposes a burden of production on the nonmoving party to bring forth evidence that is significant, probative, and substantial. *Prudential Insurance Co. v. Hinkel*, 121 F.2d 364 (8th Cir. 1997).

In the instant case, Tri-Mack has demonstrated, through the Affidavit of Sonny Mack, that Tri-Mack was, at all times, the owner of the Wheat. Tri-Mack is, accordingly, entitled to an order for summary judgment on that issue, and is entitled to a return of the portion of the proceeds of sale of the Wheat which are held in the trust account of Gislason & Hunter.

ARGUMENT

The Affidavit of Sonny Mack, filed herewith, demonstrates that Tri-Mack planted and harvested the Wheat in question. In addition, it placed the Wheat in a storage facility owned by Dale Jeffrey. The storage facility was not owned by the Debtor. In addition, after placing the Wheat in the storage facility, the Debtor obtained a loan from the CCC and secured the loan with the Wheat. The CCC, as part of its loan procedures, placed a seal on the storage facility. The Debtor, and Dale Jeffrey were fully aware that Tri-Mack had mortgaged the Wheat to the CCC. No objection thereto was ever made by the Debtor, or by Dale Jeffrey. Tri-Mack's dominion and control, as well as ownership, over the Wheat was open, notorious, and known to all parties.

Under the case law stated above, the Debtor is required to come forth with substantive, probative and significant evidence to refute the affidavit of Donald F. (Sonny) Mack, Jr. To do so, the Debtor would have to demonstrate that a sale of the Wheat was made by Tri-Mack to the Debtor, including, without limitation, the date of the sale, the purchase price, the consideration paid by the Debtor and the delivery of the Wheat to the Debtor. Tri-Mack believes no such evidence exists, and that Tri-Mack's dominion and control over the Wheat is conclusive evidence of Tri-Mack's ownership of the Wheat.

It should be noted that the Debtor admits that the Debtor acknowledged and told Sonny Mack, on or about the time the Debtor commenced his case, that the Wheat was the property of Tri-Mack, and was not owned by the Debtor. The Debtor filed a motion in this case seeking to abandon the Wheat. In its motion, attached hereto as Exhibit B to the Affidavit of Donald F. (Sonny) Mack, Jr., the Debtor admitted that it did not have an ownership interest in the Wheat. The admission, made by the Debtor in said motion, is conclusive and binding on the Debtor.

Tri-Mack is entitled to an order for summary judgment in this matter.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

/e/ Brian F. Leonard

Dated: August 31, 2004

By _____
Brian F. Leonard, #62236
Matthew R. Burton, #210018
Attorneys for Tri-Mack Potato, Inc.
100 South Fifth Street
Suite 2500
Minneapolis, Minnesota 55402-1216
(612) 332-1030

6. My purpose in placing the Wheat in storage, and taking out a loan against it, rather than selling the Wheat outright for cash, was based on my belief that the price at which I could sell the Wheat would rise during the course of the fall of 2003 and the winter of 2003 and 2004, and I did not choose to sell the Wheat immediately for that reason.

7. I understand, that in this bankruptcy case, the Debtor has caused the seals to be broken and sold the Wheat for a total price of approximately \$56,691.57. Pursuant to the resolution of the Debtor's motion to abandon the Wheat, a copy of which is attached as Exhibit B, the undersigned agreed, in order to resolve the obligations to the Debtor's motion filed by a third party, that the CCC loan would be conditionally paid from the proceeds of the sale of the Wheat (approximately \$44,691.57) and the undersigned further agreed that the remainder of the proceeds (approximately \$12,000.00 to my knowledge) was deposited in the trust account of the law firm of Gislason & Hunter.

8. At the time the grain was removed from the storage bins owned by Dale Jeffrey, I attempted to pay Dale Jeffrey the standard rate of storage fees with respect to the Wheat. At that time, I was informed for the first time that Daniel Miller had already paid the storage fees on the Wheat. I had anticipated paying the storage rental to Dale Jeffrey at the customary rate, which is determined by the number of bushels and the number of months that the grain is in storage. The amount of rental which would be owed on the Wheat could not be determined until the grain was removed from the storage facility and the term of the rental thus established. It is normal and customary to pay for grain storage rental at the conclusion of the storage term.

9. I had no discussions with Daniel Miller on the subject of payment of rental for the storage facilities for the Wheat.

10. During 2003, I had sold other and separate grain to the Debtor, and was paid for such grain by the Debtor in the normal course of business. However, the Wheat was never sold to the Debtor, and could not have been sold in light of the mortgage placed against the Wheat in favor of the CCC as explained above.

FURTHER YOUR AFFIANT SAYETH NOT.

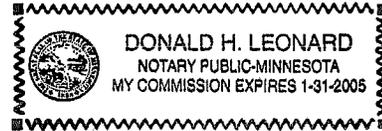
Dated: August 25, 2004

Donald F. Mack Jr.
Donald F. (Sonny) Mack, Jr.

Subscribed and sworn to before me
this 25th day of August, 2004.

[Signature]

Notary Public



@PFDesktop\::ODMA/GRPWISE/GWDSTP.GWPOSTP.STPLIB1:310346.1

CONSENT FOR STORAGE/STORAGE LIEN WAIVER

I (we) certify that Tri-Mack Potato Inc. has my consent to use my grain storage structure on E²SW⁴-30 Sullivan.

I (we) also certify that as owner(s) of the storage structure(s): I (we) have received, or have arranged to receive, any rental fee in advance, and that no lien for such rental or storage charge will be filed against any grain stored under loan for the duration of said FSA/CCC commodity loan(s) including, but not limited to, one year extension, special producer storage loan program, reserve commodity rotation, and substitutions.

Finally, the county FSA/CCC will be given written notice of at least sixty (60) days if the rental arrangement on the storage structure(s) is to be terminated and the grain is to be moved.

RECEIVED

AUG 26 2003

WEST POLK FSA

x Dale Jeffrey

Name

x 8-26-2003

Date

Dale Jeffrey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 04-60106- DDO

Daniel S. Miller,

Chapter 11

Debtor.

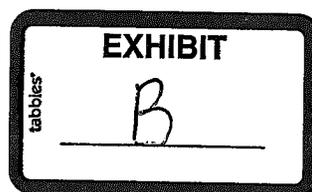
**DEBTOR'S MOTION TO ABANDON GRAIN AND PROCEEDS OWNED
BY TRI-MACK POTATO, INC.**

The undersigned, as Special Counsel to the above Debtor, hereby brings this motion and gives notice of hearing.

1. A hearing will be held on this motion before the Honorable Dennis D. O'Brien in Courtroom No. 228A, U.S. Courthouse and Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101 on the 22nd day of April, 2004 at 11:00 a.m.

2. ANY RESPONSE TO THIS MOTION MUST BE SERVED AND FILED NO LATER THAN APRIL 19, 2004 IF BY MAIL, OR SERVED AND FILED BY PHYSICAL DELIVERY NO LATER THAN APRIL 21, 2004 AT 11:00 A.M. IF NO RESPONSE OR OBJECTION IS SERVED AND FILED, THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT A HEARING.

3. The Debtor moves for an order authorizing the Debtor's abandonment of the proceeds of sale of approximately 15,000 bushels of wheat, which was owned by Tri-Mack Potato, Inc. (the "Tri-Mack Grain"). The Tri-Mack Grain was stored in bin numbers 9, 10, and 11 of the Jeffrey Bin Site and the grain has been delivered to Peavey Elevator in Grand Forks, North Dakota. Peavey Elevator is holding the proceeds of the sale pending further instruction



from the Debtor. The bins were at the Jeffrey Bin Site, the location of which is identified in the Debtor's Motion dated March 15, 2004.

4. This motion is based upon the fact that the Debtor did not own the Tri-Mack Grain, and the Debtor is not entitled to retain the proceeds thereof. Further, the Tri-Mack Grain is subject to a security interest in favor of the CCC in the approximate amount of \$44,750.00.

5. In the event any testimony is necessary or appropriate at any hearing in this matter, the Debtor, or its counsel, may give testimony and provide evidence.

WHEREFORE, the Debtor respectfully requests that the Court enter an order authorizing the abandonment of the Tri-Mack Grain and the proceeds of sale thereof and for such other and further relief as is just and equitable.

Dated: April 15, 2004

/e/ Michael S. Dove
Michael S. Dove #214310
GISLASON & HUNTER LLP
Attorneys for S02
2700 South Broadway
P. O. Box 458
New Ulm, MN 56073-0458
Phone: 507-354-3111

VERIFICATION

Debtor, Daniel S. Miller, declares under penalty of perjury that the foregoing is true and correct according to the best of his knowledge, information and belief.

Dated: April 15, 2004

/e/ Daniel S. Miller
Daniel S. Miller

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 04-60106-DDO

Daniel S. Miller,

Chapter 11

Debtor.

MEMORANDUM

Section 554 of the Bankruptcy Code states as follows:

Section 554(b) On request of a party in interest and after notice in a hearing, the Court may order the Trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The Debtor wishes to abandon the Tri-Mack Grain because the Debtor does not have an ownership interest in such grain. The grain, and its proceeds being held by Peavey Elevator, are property of Tri-Mack Potato, Inc. Therefore, the Tri-Mack Grain is of no value to the Debtor, its creditors, or this bankruptcy estate.

Dated: April 15, 2004

/e/ Michael S. Dove

Michael S. Dove #214310
GISLASON & HUNTER LLP
Attorneys for S02
2700 South Broadway
P. O. Box 458
New Ulm, MN 56073-0458
Phone: 507-354-3111

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY No.: 04-60106 DDO

Daniel S. Miller,

Debtor.

Daniel S. Miller,

Adv. No.: 04-6043

Plaintiff,

vs.

Daniel Altepeter, et al.,

Defendants.

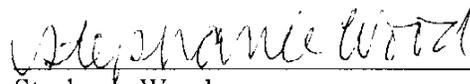
UNSWORN CERTIFICATE OF SERVICE

I, Stephanie Wood, declare under penalty of perjury that on the 31st day of August, 2004, I mailed a copy of the annexed *Motion by Tri-Mack Potato, Inc. for Summary Judgment, Memorandum of Law, Affidavit of Donald F. (Sonny) Mack, Jr. and Order (proposed)* on:

SEE ATTACHED SERVICE LIST

by mailing to all parties copies thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at Minneapolis, Minnesota, directed to said party at the last known addresses of said parties.

Dated: August 31, 2004


Stephanie Wood
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 332-1030

Darral Altepeter
17062 400th SW
East Grand Forks MN 56721

John Altepeter
17062 400th SW
East Grand Forks MN 56721

Daniel Altepeter
17062 400th SW
East Grand Forks MN 56721

Andrew Spaeth
657 Adams Ave. N.W.
Bemidji MN 56601

Roger Anderson
21237 180th Ave. NW
Viking MN 56760

Doug Barth
16614 180th St. NE
Thief River Falls MN 56701

Chuck Bina
5851 115th Ave. NE
Lankin ND 58250-9431

Bremer Bank National Association
3100 South Columbian Road
Grand Forks ND 58401

Monte Casavan
16448 140th Ave. SW
Red Lake Falls MN 56750

Emmert Farms
1881 140th Ave.
Baldwin WI 54002

Dubuque Farming Association
1843 18th Street NE
Grand Forks ND 58203-8922

Dan Juneau
17399 240th Street SE
Red Lake Falls MN 56750

Roger Hagen
13929 State Hwy 220 SW
East Grand Forks MN 56721-9015

Farmers Co-op Grain & Seed
East 8 & Davis Avenue North
Thief River Falls MN 56701

Kyle Haake
36171 210th Street SW
Fisher MN 56723-9460

J & J Gust Farms
34380 County Road 8
Strathcona MN 56759

Gary Hoper
43802 340th Ave. N.W.
Stephen MN 56757-9617

Russ Halverson
2 Forest Court NW
East Grand Forks MN 56721-1052

Loren Johnson
1432 5th Ave. NW
East Grand Forks MN 56721

JETN Farms, LLP
c/o Earl Pederson
3077 County Hwy. 178
Bejou MN 56516

J.O. Thorson Farm, Inc.
42424 - 240th Street S.W.
East Grand Forks MN 56721

K-Team
c/o David Kirsch
1935 300th Street
Waubun MN 56589-9123

Gorman Johnson
1932 5th Ave. NW
East Grand Forks MN 56721

KO-R Farms, Inc.
12389 - 410th Ave. N.W.
East Grand Forks MN 56721

Charles Kaml
25342 - 180th Street
Greenbush MN 56726

Key West Farms
38543 County Road 15
Pine River MN 56474

Joe Juneau
Dan Juneau, P.O.A.
17399 - 240th St. SE
Red Lake Falls MN 56750

David McCollum
1882 180th Street
Mahnomon MN 56557-9083

Gary Larson
P.O. Box 2053
Bejou MN 56516

Matco, Inc.
RR 3, Box 211
Fosston MN 56542

Erik Nymann
RR 1, Box 97
Plummer MN 56748

McWalter Farms, Inc.
506 12th St. N.E.
East Grand Forks MN 56721

Bradley Nelson
27 Garden Court NW
East Grand Forks MN 56721

Doyle Nelson
20589 220th Ave. NE
Goodridge MN 56725

James Narum
2953 420th Street
Gary MN 56545

Jeremy Nelson
20879 200th Ave. NE
Thief River Falls MN 56701

Patrick Noll
1284 State Hwy 200
Mahnomen MN 56557

Ose Farms a/k/a Joseph T. Ose
13748 230th St. NE
Thief River Falls MN 56701-8614

Gary Peckman
20239 West 351st Street
Paola KS 66071

Peterson Farms
31760 County Road 11
PO Box 97
Wendell MN 56590

Burl Peckman
17524 West 351st Street
Paola KS 66071-6253

Peter Anderson
38356 280th St. SW
Fisher, MN 56723-9342

Darold Rodahl
18646 270th Street NE
Thief River Falls MN 56701-8648

Dennis Salentiny
22933 140th Street S.W.
Crookston MN 56716

Gary Salentiny
22933 140th St. SW
Crookston MN 56716

Larry Roisland
26708 Center St. E.
Thief River Falls MN 56701

Hans Reinhardt
10453 89th St. NE
Langdon ND 58249

Richard Salentiny
12330 260th Ave. SE
Plummer MN 56748-9650

Tri-Mack Potato, Inc.
c/o Donald Mack Jr.
420 17th St. NW
East Grand Forks MN 56721

John Spina
20318 420th Ave.
Roseau MN 56751

Erwin Vanek
37138 180th St. SW
East Grand Forks MN 56721

Steven D. Wollin
PO Box 100
Greenbush MN 56726

Howard Steinmetz
1440 190th Ave.
Mahnomen MN 56557

Ronald Thorson
819 12th Street SE
East Grand Forks MN 56721

United Grain & Livestock
18646 270th Street NE
Thief River Falls MN 56701

Matt Thorson
819 12th St. SE
East Grand Forks MN 56721

Walter Johnson
37060 - 275th Ave. SW
Crookston MN 56716

Pederson Brothers
3077 Cty. Highway 178
Bejou MN 56516

Gregory Driscoll
40580 170th Street SW
East Grand Forks MN 56721

Dan Wichterman
18497 170th St. SE
Plummer MN 56748

Gregory Wollin
164 S. Main Street
P.O. Box 100
Greenbush MN 56726

Edward F. Klinger
Vogel Law Firm
215 - 30th Street North
P. O. Box 1077
Moorhead, MN 56560-1077

Allen J. Flaten
Attorney at Law
Bremer Financial Center, Suite 200
3100 So. Columbia Road
P. O. Box 13417
Grand Forks, ND 58208-3417

Raymond Gorman
208 3rd Ave. N.W.
P. O. Box 528
East Grand Forks, MN 56721

Phillip L. Kunkel
Gray, Plant, Mooty
1010 West St. Germain, Ste. 600
St. Cloud, MN 56301

PM Farming Inc.
P.O. Box 555
East Grand Forks MN 56721

Michael Dove
Attorney at Law
2700 S. Broadway
PO Box 458
New Ulm, MN 56073-0458

Carl E. Malmstrom
Attorney at Law
1105 Highway 10 East
P. O. Box 1599
Detroit Lakes, MN 56502

Kip M. Kahler
Kaler Doeling Law Office
P.O. Box 423
Fargo, ND 58107-0423

United States Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Jon R. Brakke
218 NP Avenue
P. O. Box 1389
Fargo, ND 58107-1389

David T. DeMars
Attorney at Law
15 Broadway, Suite 510
P. O. Box 110
Fargo, ND 58107-0110

Robert A. Woodke
Brouse, Woodke & Meyer
312 America Ave. N.W.
P. O. Box 1273
Bemidji, MN 56619-1273

David L. Johnson
Dakota Center Bldg., Suite 600
51 Broadway
P. O. Box 2189
Fargo, N.D. 58108

Kevin Duffy
Duffy Law Office
1008 W. Second Street
Thief River Falls, MN 56701

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY No.: 04-60106 DDO

Daniel S. Miller,

Debtor.

Daniel S. Miller,

Adv. No.: 04-6043

Plaintiff,

vs.

ORDER

Daniel Altepeter, et al.,

Defendants.

At Minneapolis, Minnesota this ____ day of _____, 2004.

A motion for summary judgment by Tri-Mack Potato, Inc. ("**Tri-Mack**") came on for hearing on the 30th day of September, 2004 at 10:30 o'clock a.m.

Appearances were noted in the record.

Based upon the motion of Tri-Mack, and upon on the files and proceedings in this case, it is hereby,

ORDERED, that the motion of Tri-Mack for summary judgment is granted, and Tri-Mack is determined and adjudicated to be the owner of the 14,612.71 bushels of Wheat identified in Tri-Mack's motion and in paragraph 111 of the Debtor's Complaint herein, and is the owner of all the proceeds of sale thereof.

Robert J. Kressel
United States Bankruptcy Judge