

State of Minnesota
Marshall County

District Court
9th Judicial District

Court File Number: **45-CV-17-39**

Case Type: Civil Other/Misc.

JEFFREY ALBERT PETERSON
1010 W ST GERMAIN ST
STE 500
ST CLOUD MN 56301

**Notice of Filing of Order
and Order**

In RE: The Assignment for the Benefit of Creditors of William Sczepanski

You are notified that an order was filed on this date.

Dated: April 9, 2018

Pamala J Shaw
Court Administrator
Marshall County District Court
208 East Colvin Ave., Suite 18
Warren MN 56762
(218) 745-4921

A true and correct copy of this notice and the accompanying order has been served by U.S. Mail or email upon the following parties at the last known postal or email address of each.

Enclosure(s)

cc: ERIK ARVID AHLGREN
JOSHUA ADAM HASKO
CAREN LYNN STANLEY
KRISTIN BETH ROWELL
STEVEN CHARLES EKMAN
DAVID G VELDE
MICHAEL SHERWOOD DOVE
Channel Seed
WAYNE W CARLSON
CNH Productivity Plus
Agri-Seed Solutions
U.S. Bank Equipment Finance
BENJAMIN JOHN COURT
U.S. Bank
PHI Financial Services, Inc.
JOHN W MUELLER

FILED IN THE NINTH
JUDICIAL
DISTRICT COURT
MARSHALL COUNTY, MN

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STATE OF MINNESOTA
COUNTY OF MARSHALL

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

Court File No.: 45-CV-17-39

**In Re the Assignment for the Benefit
of Creditors of :**

William Sczepanski.

**Order Authorizing (1) Auction of
American Crystal Unit Retains, and
(2) Distribution of Proceeds**

This matter came before the Court on the motion of Erik Ahlgren, as assignee in the above captioned matter ("Assignee"), requesting an order of the court authorizing (1) the sale of the right to receive future payments from American Crystal Sugar Company ("American Crystal") unit retains by auction, free and clear of liens, pursuant to the terms of Minn. Stat. §576.46, and (2) the distribution of the proceeds from the sale pursuant to the terms of Minn. Stat. §576.51.

GF Finance has filed an objection to the motion and asked the Court to determine: (1) the priority of security interests in certain American Crystal unit retains; and (2) whether a sale of unit retains should even occur. The Court took the matter under advisement on March 22, 2018.

Present at the hearing were:

Erik Ahlgren, Assignee;

Kristin Rowell, counsel for GF Finance, Inc.;

Jeffrey Peterson, counsel for Choice Financial Group; and

Seth Harrington, counsel for John Deere Financial.

Based upon the argument of counsel, file, and record, the Court makes the following:

Findings of Fact

1. American Crystal, a Minnesota agricultural cooperative formed under 308A of the Minnesota Statutes, is owned exclusively by sugar beet growers. Membership or ownership in American Crystal can only be obtained through purchase of a Common Stock. Article III, Section 3, of the Articles restricts ownership of Common Stock to sugar beet farm operators in an area limited to 35 miles to the east and 35 miles to west of the Red River of the North along its 200 mile journey to the Canadian border (“the valley”). Article 1, Section 1, of the Bylaws define operator as a person, firm, partnership, or corporation.

2. American Crystal has five factory districts in the valley for operation of costly processing machinery for the delicate harvest of sugar beets. The capital intensive process requires a closed economy to maintain stable prices for production of sugar and utilization of production capacity. Accordingly, American Crystal Bylaws only allow and require Common Stock shareholders to deliver sugar beets to American Crystal. The delivery amount is determined by the processing capacity allocated for each Preferred Stock share owned, which obligates a certain amount of acreage of sugar beets to be planted in each factory district. Article 1, Section 2, of the Bylaws, requires the member, a Common Stockholder, to buy shares of American Crystal Preferred Stock, and is one reason why the United States Department of Agriculture considers American Crystal a closed cooperative.

3. In addition, the United States Congress has required the United States Department of Agriculture to support the market price in the United States for sugar through limits on imports of foreign sugar. The import quota ensures

that market prices stay above effective support levels to maintain reliable domestic supply.

4. William Szczepanski was a Grower, Managing Partner, or General Partner in twenty-two Sugar Beet Entities (Limited Liability Partnerships, Limited Partnerships, and Joint Ventures).

5. William Szczepanski provided one share of American Crystal Common Stock, inputs, and conducted farming operations as Grower, Managing Partner, or General Partner in the twenty-two Sugar Beet Entities.

6. A separate individual was the Owner, Contributing Party, or Limited Partner in the twenty-two Sugar Beet Entities who provided the American Crystal Preferred Stock shares with the approval of the board of American Crystal.

7. Each Sugar Beet Entity, a shareholder of record with American Crystal of both Common and Preferred Stock, is obligated to deliver (due to ownership of a share of Common Stock) a certain amount (based on the number of Preferred Stock shares held) of sugar beets to American Crystal each sugar beet season as grower and sugar beet operator.

8. Pursuant to Article VI, Section 1 of its Bylaws, American Crystal may retain up to 10% of the weighted average gross per ton payment to all members for sugar beets delivered to fund operations and service debts. The retained amount for each year is scheduled to be paid out after seven years and is termed a unit retain. A unit retain is, in essence, a non-interest bearing subordinated loan to American Crystal, but is characterized as member equity on American Crystal's financial statement.

9. Article VI, Section 5, of the Bylaws direct unit retains be paid out to the Preferred Stock shareholder of record.

10. William Szczepanski was a shareholder of record for thirty-five shares of Preferred Stock in American Crystal and had unit retain checks written out to him personally from American Crystal.

11. William Szczepanski did not contribute Preferred Stock shares to any of the twenty-two Sugar Beet Entities.

12. A Notice of Security Interest was executed by each respective Sugar Beet Entity and provided the unit retains be issued by American Crystal via a joint check to the borrower and secured party. The earliest set of these was in favor of Choice Financial Group between January 21, 2009, and January 15, 2010, for all twenty-two of the Sugar Beet Entities, and a later set was executed in favor of John Deere Finance with the exception of Szczepanski TZ LLP and Szczepanski BZ LLP.

13. On April 7, 2004, Citizens Bank filed a UCC-1 financing statement, which named GF Finance as a creditor and William Szczepanski as a debtor. On September 4, 2007, William Szczepanski executed a security agreement in favor of GF Finance. Both the financing statement and security agreement cover American Crystal Unit retains.

14. In 2009 and 2010, Choice Financial Group and John Deere Finance, respectively, also obtained security interests in William Szczepanski's unit retains.

15. Several Sugar Beet Entities and Choice Financial Group, have already received joint checks from American Crystal for current unit retain payments.

Conclusions of Law

1. Based on the Notice of Security Interests and the current joint check issuance, each respective Sugar Beet Entity granted a first priority security interest in its unit retains to Choice Financial Group.

2. John Deere has a second priority interest in the unit retains of the Sugar Beet Entities based on its notices.

3. GF Finance has a third priority security interest in the unit retains of the Sugar Beet Entities payable to William Sczepanski as Grower, Managing Partner, or General Partner based on its UCC-1 financing statement and security agreement form 2004 and 2007, respectively.

4. GF Finance has a first priority security interest in the unit retains payable to William Sczepanski.

5. The amount to be realized from the sale of the unit retains will not be less than what GF Finance would realize within a reasonable time in the absence of the sale.

Order

1. The Assignee is authorized to sell, by auction, the right to receive the following American Crystal unit retains over a period of years:

Payee	2011 -2015 Unit Retains
Bill Szczepanski	14,262.04
Szczepanski - VGF JV	68,934.11
William Szczepanski and Ron Peterson, Inc. Limited Liability Partnership	71,769.54
Szczepanski - Nikle LLP	44,880.54
Szczepanski and RKA LP	27,021.52
Bill Szczepanski - PPW LP	44,949.26
Szczepanski - Foley JV	58,026.97
Bill Szczepanski - S Hjelle JV	8,493.55
Szczepanski - BRF Sugarbeet LLP	0.0
Szczepanski - Ogaard LLP	13,367.46
Szczepanski - RT LP	15,370.99
Szczepanski - LO LP	41,321.9
Szczepanski - Aldrich LLP	61,154.98
Szczepanski - BDT LP	85,930.64
Szczepanski - LB LP	3,808.74
Szczepanski - GM Sugarbeet LLLP	24,602.66
Szczepanski - Youngren LLP	55,981.2
Szczepanski - Baumler JV	9,585.5
Szczepanski - Haug LLP	28,870.82
Szczepanski - Valan LLP	21,961.68
Szczepanski - EZ LLP	4,919.2
Szczepanski - TZ LLP	547.72
Szczepanski - BZ LLP	14,439.12
Total	720,200.14

2. The date and time of the auction will be determined by the Assignee and will be advertised for a reasonable period of time, which period shall be no less than 10 calendar days.

3. The purchaser shall take the unit retains free and clear of liens, with the proceeds to be held by the Assignee subject to the liens in the same order,

priority and validity as the liens had with respect to the unit retains immediately before the sale.

Other than as provided in the sentence above, the purchaser will purchase the unit retains on an "as is" basis, with no representations or warranties whatsoever.

4. American Crystal may make payments of the unit retains pursuant to its ordinary procedures, but any payments shall be made payable to the purchaser, subject to any reasonable and ordinary application process.

5. The Assignee may create rules for participation in the auction, and bidding, including the creation of separate lots, and the right to set a minimum price for each lot sold.

6. The Assignee is authorized to distribute proceeds from the unit retains payable directly to William Sczepanski as follows:

- a. First, 3% of the proceeds will be held by the Assignee pursuant to the court's order dated March 8, 2017 and included in the fund to pay administrative fees and expenses;
- b. Second, to GF Finance to set off against their secured debt.

The amounts distributable pursuant to this provision will consist of the \$2,833.92 check received on behalf of the 2009 unit retains, the \$10,541.96 in checks received on behalf of the 2010 unit retains and any proceeds from the sale of the right to receive \$14,262.04 in future unit retains.

7. The Assignee is authorized to distribute proceeds from the unit retains payable directly to the Sugar Beet Entities as follows:

- a. First, 3% of the gross sales price will be held by the Assignee pursuant to the court's order dated March 8, 2017 and included in the fund to pay administrative fees and expenses;
- b. Second, to Choice Financial to set off against their secured debt.
- c. Third, to the extent there is a bid in excess of the Choice Financial secured debt, the overage will be paid to John Deere to set off against their secured debt until paid in full. Any remainder would be distributable to the Sugar Beet Entity and subject to the security interest of GF Finance.

The amounts distributable pursuant to this provision will consist of the payments included in the table set out in paragraph 4 of the Assignee's motion, other than those payable directly to William "Bill" Szczepanski. Those amounts include \$140,722.38 in checks derived from the 2009 unit retains, \$222,764.92 in checks derived from the 2010 unit retains and any proceeds from the sale of the right to receive \$720,200.14 in future unit retains.

8. A creditor with a claim secured by a valid and perfected lien against the property to be sold may bid on the property at a sale and may offset against the purchase price part or all of the amount secured by its lien, provided that the creditor tenders cash equal to 3% of the gross sales price to be held by the Assignee pursuant to this court's order dated March 8, 2017, and all liens payable out of the proceeds of sale having priority over the lien of that creditor.

9. The Assignee is authorized to execute all documents necessary effectuate this Order.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'E. Schieferdecker', written over a horizontal line.

Eric Schieferdecker
Judge of District Court
Schieferdecker, Eric
Apr 9 2018 3:27 PM