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**Notification of service – Brief in Support of Bremer Bank's Motion to Intervene**

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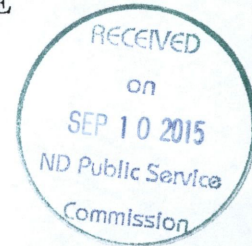
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IN DISTRICT COURT, GRAND FORKS COUNTY, STATE OF NORTH DAKOTA

Public Service Commission, )  
)  
Petitioner, )  
)  
vs. )  
)  
Grand Forks Bean Company, Inc., )  
Auto-Owners Insurance Company, )  
)  
Respondent. )  
vs. )  
)  
Bremer Bank, National Association, )  
)  
Applicant for Intervention. )  
\_\_\_\_\_)  
PSC Case No. GE-15-36 )

Civil No. 18-2015-CV-00240

**BRIEF IN SUPPORT OF  
BREMER BANK'S MOTION TO  
INTERVENE**



**FACTS**

¶1. The Respondent Grand Forks Bean Company, Inc. took out loans from Bremer Bank, National Association (“Bremer”) and as part of that financing pledged all of its personal property assets including all “inventory” to Bremer to secure the loans, among other categories of collateral. The security interest is intended to secure all indebtedness Grand Forks Bean Company, Inc. owes to Bremer and at any time such indebtedness accrues. (Affidavit of Angela Baumann filed in support of the Motion to Intervene). Bremer has perfected its security interest by filing a UCC-1 Financing Statement with the North Dakota Secretary of State’s office. (Affidavit of Kevin Beito).

¶2. Bremer asserts herein that it has a first priority lien to all of the inventory and other categories of collateral of Grand Forks Bean Company, Inc., and all proceeds therefrom. As a part of this proceeding, Petitioner seeks to gain control of, and disperse proceeds realized

from the sale of Grand Forks Bean Company, Inc.'s inventory which has been pledged as collateral to Bremer. (Application, Doc. # 1.)

### LAW AND ARGUMENT

¶3. Bremer herein claims an interest in the property that is the subject of this action. North Dakota Rule of Civil Procedure 24(a) provides Bremer may intervene in this action as a matter of right. Rule 24(a) provides as follows:

**(a) Intervention of Right.** On timely motion, the court must permit anyone to intervene who:

- (1) is given an unconditional right to intervene by a statute; or
- (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Under Rule 24(a), a movant must show 1) the motion is timely, 2) the movant claims a direct interest in the subject of the lawsuit, 3) disposing of the suit will practically impair or impede the movant's interest, and 4) no current party adequately represents the movant's interest. Here, Bremer meets all four criteria. See 7C Wright, et al., Fed. Prac. & Proc. Civ. § 1908 Intervention under the 1966 Amended Rule—In General, § 1908 (3d ed.). The burden is not intended to be high for a motion to intervene under Rule 24(a): "Intervention has historically been liberally granted in North Dakota." Brigham Oil & Gas, L.P. v. Lario Oil & Gas Co., 2011 ND 154, ¶ 40, 801 N.W.2d 677, 689 (quoting Eichhorn v. Waldo Twp. Bd. of Sup'rs, Cnty. of Richland, 2006 ND 214, ¶ 13, 723 N.W.2d 112, 116).

¶4. First, the motion is timely because it is made early in this proceeding and prior to any other party being prejudiced. Id., ¶ 42. A motion to intervene under Rule 24(a) may even be brought after entry of judgment in the action and still be considered timely. Id. ¶ 40 (citing

Quick v. Fischer, 417 N.W.2d 843, 845 (N.D.1988)). In Quick, a junior lienholder sought to intervene in a lawsuit for the cancellation of a contract for deed involving the equitable interest in real estate to which his lien was attached. Quick, 417 N.W.2d at 844. The North Dakota Supreme Court held the lienholder should have been granted permission to intervene, even after judgment was entered, because the vendor cancelling the contract for deed was aware of the junior lien and should have joined the junior lienholder in the first instance. Id. at 845. Here, Bremer is a lienholder of record for assets that the Commission seeks to include in its trust and is fully aware of Bremer's asserted lien. Also, the proceedings in this matter have no substantially advanced, and there would be no prejudice to the joinder of Bremer at this early stage of the litigation. Thus, Bremer's motion to intervene is timely.

¶5. Second, Bremer is claiming a first priority perfected security interest in the inventory of Grand Forks Bean Company, Inc. The Commission is seeking authority from the court to take control of Grand Forks Bean Company Inc.'s grain inventory, and ultimately disperse proceeds of that inventory. Like in Quick, the asserted lien by Bremer is sufficient to grant standing to this suit which seeks to dispose of the property to which Bremer's lien is attached. Thus, Bremer has a direct interest in the subject of this proceeding.

¶6. Third, disposing of this matter without joining Bremer will have the practical effect of impeding and impairing Bremer's interest. In Fischer v. Fischer, 546 N.W.2d 354, 357-58 (N.D. 1996) the North Dakota Supreme Court held the minority shareholders of a closely held corporation could not intervene in the majority shareholders' divorce proceeding because the minority shareholders' shares were no being distributed in the divorce and minority shareholders historically have very little rights in the corporate context. In Fischer, the North Dakota Supreme Court discussed a situation which does meet the third requirement

under Rule 24(a) being where a creditor would be frustrated in collecting from its debtor when the debtor becomes a party to an administrative insolvency proceeding. Id. (citing S.E.C. v. Flight Transp. Corp., 699 F.2d 943, 948-49 (8th Cir.1983)). In S.E.C., the Eighth Circuit ordered a lessor of airplanes be permitted to intervene in a Securities and Exchange Commission proceeding to seek recover for defrauded investors in the company that was leasing the airplanes. Id. at 945-46. The Eighth Circuit held as a practical matter, not allowing the lessor to intervene would destroy its property interest; “because virtually all [lessee]’s assets are in the hands of the receiver and may be subject to an order of ‘disgorgement’ or constructive trust [in favor of defrauded investors] by the District Court, [lessor]’s interests may be foreclosed by the action.” Id. at 948. Like S.E.C., Bremer’s source of repayment, its security interest in Grand Forks Bean Company, Inc.’s grain inventory, will very likely be in the hands of the Commission as trustee in this matter, and subject to the order of this court, its interest in the grain inventory will be impaired. As such, the Bremer should be allowed to intervene to prevent the impairment of its property interests which are the subject of this action.

¶7. Fourth, no current party to this action adequately represents Bremer in this proceeding, as the Commission’s duties run to receiptholders who were storing grain in Grand Forks Bean Company Inc.’s warehouse. Similarly, Grand Forks Bean Company, Inc. does not adequately represent Bremer’s assertion to its security interest. See In re Larkham, 27 B.R. 859, 861 (Bankr. D. Vt. 1983) (noting debtor in a bankruptcy did not adequately represent the debtor’s lienholder and that “[i]n similar cases, the Courts have allowed intervention by a party, whose only interest in the litigation is a lien on proceeds”). Also, the burden for meeting the no adequate representation requirement is “minimal”. S.E.C., 699

F.2d at 948 (quoting Trbovich v. United Mine Workers, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 636 n. 10, 30 L.Ed.2d 686 (1972)). Here, no other party is similarly situated to protect Bremer's interest and as such, Bremer has met the fourth requirement to intervene under Rule 24(a).

¶8. Alternatively, if the court determines Bremer is not permitted to intervene as a matter of right, the court should still allow Bremer to intervene in this action permissively under Rule 24(b). Rule 24(b) provides in part as follows:

(b) Permissive Intervention.

(1) In General. On timely motion, the court may permit anyone to intervene who:

(A) is give a conditional right to intervene by a statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

...

(3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Here, there are common questions of law and fact that will be determined in this action as to who is entitled to the proceeds from Grand Forks Bean Company, Inc.'s grain inventory. Granting Bremer permission to intervene will allow for greater efficiency and prudent use of the parties' and the court's resources as one action can adjudicate the entitlement to the grain inventory proceeds, as opposed to a separate suit being brought to litigate the priority and efficacy of Bremer's security interest.

**Conclusion**

¶9. Bremer Bank, National Association has a claim to the same assets that potential compromise the trust assets in this insolvency. Bremer is the only person in a position to

assert its claims of priority over and against any other claims, and ultimately entitlement to the proceeds of Grand Forks Bean Company Inc.'s grain inventory. As such, Bremer should be permitted to intervene in this action and file the Answer to Application for Appointment as Trustee, Counterclaim, and Crossclaim attached to its Motion to intervene.

Dated this 9 day of September, 2015.



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