

SEP 15 2004

**IN THE UNITED STATES BANKRUPTCY COURT** UNITED STATES  
**FOR THE DISTRICT OF ARIZONA** BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re: ) Chapter 11  
LERROY MARTIN HEILE and WANDA LEE ) No. 0:04-bk-01055-EWH  
HEILE, )  
\_\_\_\_\_ Debtors. ) Adversary No. 0:04-ap-0037

7 GRIFFIN PRODUCE, INC., a corporation; and )  
8 FRESCHI FARMS, INC., an Arizona )  
corporation, )

9 Plaintiffs, )

10 vs. )

11 LERROY MARTIN HEILE and WANDA LEE )  
HEILE, husband and wife, )

12 \_\_\_\_\_ Defendants. )

13 LERROY MARTIN HEILE and WANDA LEE )  
HEILE, husband and wife, )

14 Counterclaimants, )

15 vs. )

16 GRIFFIN PRODUCE, INC., JOHN DOES 1-3; )  
17 JANE DOES 1-3; ABC CORPORATIONS 1-3; )  
18 DEF PARTNERSHIPS 1-3; GHI LIMITED )  
PARTNERSHIPS 1-3; JKL LIMITED )  
LIABILITY COMPANIES, )

19 \_\_\_\_\_ Counterdefendants. )

**MEMORANDUM DECISION**

**(CONTAINING FINDINGS OF FACT**

**AND CONCLUSIONS OF LAW)**

(Under Advisement since September 10,  
2004)

21 This adversary proceeding was tried on September 8 - 10, 2004. The plaintiffs were  
22 represented by A. James Clarke; the defendants were represented by Barry L. Olsen. After considering  
23 the evidence, testimony, and applicable law, the court now issues its findings of fact, conclusions of law,  
24 and ruling. The facts set forth herein, as well as the legal analysis, constitutes Findings of Fact and  
25 Conclusions of Law. FED. R. BANKR. P. 7052.





1 Sometimes the underlying subleases of the Island were between a principal lessor and  
2 "Horizon Farms" as lessee (see, e.g., Ex. 7); sometimes the lessee was "Heile Enterprises, Inc." (see, e.g.,  
3 Ex. 31, 8); sometimes "FFI" (Ex. 9); and sometimes "Leroy Heile and Wanda Heile" (see, e.g., Ex. 16  
4 and 32).

5 In the instant controversy, once the subleases in dispute had been acquired, the Heile  
6 entities (instead of FFI) subleased the acreage to, not FFI, but to GPI, dba "Misionero Vegetables" (see  
7 Ex. 16, 17). The only other contract between the Debtors and their sublessees was a farm management  
8 agreement adopted informally each year and which would general annual income to the Debtors of  
9 approximately \$190,000 (paragraph 6 of Ex. 16, 17). This agreement, although contained as a numbered  
10 paragraph within the ground leases, was in fact and law a fully separate agreement, with covenants  
11 completely distinct and independent from the ground leases.

12 In this fashion, the Debtors, their various entities, GPI, Steven Griffin, and FFI drifted for  
13 years through their business relationship. Over time, it became difficult to discern where their legal  
14 boundaries started and stopped. This lawsuit is the final product of that imprecise arrangement.

### 15 16 The Current Contracts

#### 17 "Secret Profits" and "Pass-Throughs"

18  
19 The instant controversy principally centers around two contracts. They are:

20 <b>Exhibit</b>	16	17
21 <b>Contract</b>	Lease	Lease
22 <b>Acres</b>	1067.62 acres	325.84 acres
23 <b>Date</b>	11/19/2002	12/28/2001
24 <b>Lease Term</b>	3 years (7/1/02 - 6/30/05)	3 years (1/1/02- 12/31/04)
25 <b>Consideration</b>	\$587,191 per year (\$550 per acre)	\$179,212 per year (\$550 per acre)
26		

<b>Exhibit</b>	<b>16</b>	<b>17</b>
<b>Water</b>	\$80,071.50 per year (\$75 per acre)	\$24,438 per year (\$75 per acre)
<b>Lessor</b>	Leroy and Wanda Heile	Leroy and Wanda Heile
<b>Lessee</b>	GPI	GPI

FFI, as a plaintiff, maintains that the Debtors have injured it by obtaining what it refers to as "secret profits" under these leases. These "secret profits" allegedly arise out of the Debtors having obtained the underlying leases for significantly less per acre than the amounts for which they are leasing the ground to GPI (see Ex. 109, 110, 111). FFI alleges that the Debtors' duplicity, as officers of FFI, caused it to lose \$1,271,237 in surreptitiously "marked-up" rents (Ex. 109, 110, 111).

FFI, however, has failed to prove a cause of action for what it terms "rent embezzlement" or "secret profits." In part, this is because of the only two current leases placed in evidence (Ex 16, 17), FFI is a party to neither. No other FFI-Debtor agreements were placed in evidence. Because the human signatories on each contract (Ex. 16, 17) were officers, directors, or shareholders of FFI and GPI, or some combination thereof, it is not a stretch to conclude that they knew on whose behalf they were contracting. And FFI was not such a party. Accordingly, FFI has no claim for "embezzled rent" or "secret profits" because it has proven no damages and no agreements. Moreover, it has no standing to assert a breach of contracts to which it was not a party. No evidence was produced to show that it ever signed subleases and that it was injured by any breach of fiduciary duty to it. Nor did FFI prove the existence of any agreement by which it was supposed to benefit.

Insufficient evidence, indeed no evidence, persuades this court that it should substitute another corporate entity into either contract (Ex. 16, 17), when all parties to the contracts - both corporate and human - are sophisticated in matters of agribusiness and appear in numerous transactions wearing different legal "hats." Additionally, FFI has produced no document to show that the Debtors were prohibited from "marking up" subleases to GPI. One would expect that in the 11 years since

1 incorporation, someone would have created some writing on this allegedly important and obvious issue,  
2 which according to Steve Griffin, was discussed on occasion but never reduced to writing. The Debtors  
3 deny that such discussions ever took place.

4           Because of the lack of any documents that might bind FFI, this court must believe the  
5 Debtors' version that no such non-markup agreement was ever made.

6           Nor has plaintiff GPI shown how it deserves to be relieved from contracts into which it  
7 voluntarily entered without duress. Steven Griffin discussed in his testimony how he perceived that GPI  
8 would only be charged "pass-through" rents; that is, that GPI would not suffer lease payments greater than  
9 what GPI's lessors (here, the Debtors, individually) were paying on the underlying leases. Mr. Heile's  
10 testimony was diametrically opposed to that opinion. However, the contracts are unambiguous and clear;  
11 the parties are sophisticated farmers with years of experience in the Yuma market; the parties to Ex. 16  
12 and 17 are intimately familiar with the land farmed in "the Island" and with whom the original and  
13 underlying "wrapped" leases were with. Any minimal act of due diligence would have revealed the  
14 allegedly undisclosed "mark-up." With minimal due diligence, the parties could have cleared up this  
15 alleged misperception.

16           Moreover, there was no evidence presented, other than Mr. Griffin's minimalist testimony,  
17 to reflect that there was any type of fraud connected with the execution of the current leases. GPI did not  
18 produce a single written document in support of its case, in which the words "pass-through," "no mark-  
19 up," "same cost," or similar term existed, and by which the court could glean even a hint of such alleged  
20 intent (see, e.g., Ex. 12, 15, notes from early FFI formation meetings). Thus, even though Mr. Griffin  
21 may have assumed such a deal, he failed, for over a decade, to generate any writing which would  
22 contradict the otherwise clear and unambiguous amounts and calculations set forth in Ex. 16 and 17.  
23 Additionally, the complete lack of due diligence, for so many years, estops GPI from claiming that it was  
24 injured by its execution of simple, unambiguous contracts that required it to pay specific lease payments.  
25 Mr. Heile's testimony that no such verbal agreement was even made is equally probable.

1 Thus, there being no evidence that GPI was misled into signing clear agreements, the *bona*  
2 *fides* of which it could have easily investigated, this court is unable to grant it any relief related to its  
3 having allegedly overpaid. Its claims will be dismissed.

4 FFI's claims for "secret profits" will also be dismissed.<sup>1</sup>

5  
6 **The Leased Land - Who is Entitled to Possession?**

7  
8 GPI maintains that one of the two lease agreements, Exhibit 16, has been partially  
9 breached by Debtors. This is based upon evidence that the Debtors leased substantial portions of the  
10 Island acreage to GPI for which they did not have valid subleases in place for the entire lease term. The  
11 leases specify various parcels, each of which have been subleased from various parties. But in several  
12 instances, the Debtors' subleases expire prior to the expiration of the GPI lease terms. Hence, GPI  
13 contends that it is not obliged to pay for those proportionate parts. It does, however, desire to keep  
14 farming on the viable leased land.

15 The following chart reflects the evidence on this issue. The only lease affected is the one  
16 (Ex. 16) executed on November 19, 2002.

17  
18

Ex.	Original Lessor	Date	Term	Acres	Expires
7	K.H. Easterday Trust	06/26/02	1 year	120	06/30/03
31 D-4	Marvin A. Martin	02/27/97	8 years	220	12/31/04
32 D-23 D-24 D-25	F.C. Perez	01/01/00	5 years	177	12/31/04 (extended to 12/31/05)

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24

25 <sup>1</sup> FFI wants to hold the Debtors personally liable for "profiting" at the expense of the corporation.  
26 GPI wants to pay a lesser amount for its leases. Both figures are the same. GPI is a major  
shareholder of FFI (75%). It cannot have it both ways.

Ex.	Original Lessor	Date	Term	Acres	Expires
34	K.H. Easterday Trust	07/04/03	1 year	120	06/30/04
37	Lou Ella Harp	12/31/99	5 years	94	12/31/04

(See, also, summary, D-4.)

Of the approximate 1,067.62 leased acres described in Ex. 16, the above expired or expiring leases total between 554 and 731 acres, depending upon whether the Perez lease expires on December 31 of 2004 or 2005. Thus, GPI deducted from the annual rent, due July 1, 2004, those leases that had expired or will expire before GPI's lease ends, which GPI calculates that it will not have a viable possessory interest in, and that it will be unable to farm. (See Ex. 26.) Thus, GPI lowered the last instalment of annual rent, proportionately, to \$312,281.88 (Ex. 26). This figure includes the water allotment as well as the rent.

But GPI does desire to continue to rent the still viable portion of the November 19, 2002 lease.

At trial, Debtor Leroy Heile conceded that GPI should not be expected to perform and pay for leases and periods for which Debtors could not guarantee or deliver acreage. Moreover, while GPI contends that it was misled initially, it appears to be satisfied that if it is relieved of its corresponding lease obligations as to those identified parcels, and stresses that it will continue to pay (and has paid) fully for the balance of the leased land. Thus, it appears that the leases have been mutually modified. GPI calculates that it owes, on the last annual payment, \$312,281.88 of the \$587,191 (lease) and \$179,212 (water) for which it originally contracted. (See Ex. 26, D-43.) Debtors have not disputed this calculation, and GPI has paid it. Such sum rests with the Superior Court of Yuma County.

The court construes paragraph 6 of Ex. 16 and 17 to be separate contracts, distinct from the ground leases. Debtors' alleged breaches thereof and its abandonment of their agreement to farm (Ex. 29, 42, 48, 49), do not affect GPI's rights to remain in possession of the viable leased land through December 31, 2004 and June 30, 2005, for which it made full and timely payment.

1 The court finds and concludes that GPI has not breached the leases of either Ex. 16 or 17,  
2 and that GPI may remain in quiet possession of the leased ground through the lease terms expiring on  
3 December 31, 2004 and June 30, 2005.

4 Thus, an order will be entered that authorizes this modification, orders the Clerk of Yuma  
5 County Superior Court to pay such rental to the Debtors' estate, and that further authorizes GPI to remain  
6 in possession and control of the balance of the leased property according to the leases' terms, which last  
7 expire on June 30, 2005.

8 Additionally, as part of this order, Debtors will be enjoined through the termination of the  
9 lease periods from entering onto such leased lands, or in any way interfering with GPI's quiet enjoyment  
10 and use thereof.

11  
12 **Payment of Personal Debts with FFI Monies**  
13 **(Embezzlement; Breach of Fiduciary Duty)**  
14

15 FFI has alleged that the Debtors, as officers of FFI, used FFI operations' money to pay  
16 obligations that were not properly those of FFI, and which instead benefitted the Debtors or their  
17 affiliated entities.

18 In the course of Steven Griffin's testimony, as a shareholder of FFI, he pointed out that  
19 the following expenses, paid by FFI, did not benefit FFI and instead benefitted Debtors or their related  
20 entities:

21

Ex.	Amount	To	For	Reason FFI Not Benefitted
22 48	8,529.06	IRS	Employee Withholding Taxes	FFI has no employees. (Wanda Heile deposition, p. 14, lines 5-7.)
23 29	2,060.00	Lee Alexander	Bees	Crops grown for FFI needed no bees; crops grown by Debtors or their entities did require bees.

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Ex.	Amount	To	For	Reason FFI Not Benefitted
61	500.00	Leroy Heile	--	No explanation.
62	3,477.66	Pete Gomez	Alfalfa chemical	FFI does not grow alfalfa, but Debtors or their entities do.
67	5,877.50	Arizona Grain	Alfalfa seed	See above.
68	831.39	Pete Gomez	Alfalfa chemical	See above
69	304.30	Arizona Grain	Alfalfa seed cleaning	See above.
73	551.41 60.12	Kaman	Repair of hydraulic motor	FFI does not own one.
104 105	76,000.00 (approx.) (various)	Western Farm Service	Chemicals for wheat stubble	Placed on land grown by Horizon Farms
96	--	--	--	[GPI and Steve Griffin did not explain the significance of this exhibit.]

These alleged improper FFI expenditures total approximately \$98,191.44.

Accordingly, the court finds and concludes that FFI has presented a *prima facie* case that it has an unsecured claim against the Debtors for approximately \$98,191.44 for the breach of fiduciary duty by FFI's officers, Wanda and Leroy Heile.

The evidence is clear that the Debtors, as officers of the FFI corporation, caused corporate checks to be issued to various vendors for goods and services that benefitted only their companies, themselves personally, or others. They, thus, breached their fiduciary duties to act in the best interests of the corporation and engaged in self-dealing.

Accordingly, FFI has made a *prima facie* case that it has an unsecured claim against the Debtors' bankruptcy estate in the approximate sum of \$98,191.44, unless further proof is adduced to reduce or eliminate that amount.



1 Multiplied by the approximate 2,200 acres under lease, this year's annual farming figure came to  
2 \$198,000. In addition, the leases, Ex. 16 and 17, call for \$75 per acre per year for water, which according  
3 to the Debtors is either break-even or a loss to them. In any event, that figure adds another \$165,000 or  
4 so to the Debtors individually, each year.

5 At trial, the parties spent a great deal of time haggling over what is, or is not, an  
6 appropriate "extra" charge above the annual management fee.

7 Unfortunately for the parties, there is not a single written agreement that guides the court.  
8 Even paragraph 6 of Ex. 16 and 17, quoted above, says nothing about extra charges above the  
9 management fee. Nonetheless, the parties have always (up to the time of the trial) worked amicably to  
10 resolve what they have come to call, through their custom and practice, "extras."

11 They have agreed to do so here, and defer this portion of the trial to a later date.  
12 Therefore, the court renders no ruling, at this time, for this disputed claim, as the parties will work to  
13 amicably settle the matter. If the matter is eventually presented to the court, the parties will be expected  
14 to prove the history of their prior course of dealing so that the court has a basis for any claimed breach  
15 of contract.

### 16 17 Conversion

18  
19 FFI seeks damages for the conversion of two pieces of equipment, a three-part cultivator  
20 valued at \$2,800, and an air planter valued at \$7,000 - \$7,800. The only evidence presented was Mr.  
21 Griffin's testimony that one of "Heile's men" told him these items were sold.

22 The Debtors claim that they do not have such items, and that approximately five years ago  
23 they gave such items to Anthony Griffin, Steven Griffin's brother, who indicated that he would take the  
24 items to "C. Kane Seed."

25 Again, like so much of this case, the parties have documentation for everything except  
26 what they have placed at issue.





1 2. **From approximately 1993 through June of 2004, Leroy and Wanda Heile**  
2 **owed a fiduciary duty to Plaintiffs in connection with the operation of**  
3 **Plaintiffs farming operations conducted on the "island".**

4 No. Heiles' obligations to farm were simply a matter of contract with GPI. No  
5 contract was produced showing FFI as a party.

6 3. **Whether Debtors have committed fraud and theft against Plaintiffs [GPI and**  
7 **FFI] by stealing money from Plaintiffs while acting as growers, managers,**  
8 **officers, directors, and agents of Freschi Farms, Inc. and Griffin Produce,**  
9 **Inc.**

10 Partially true. FFI proved a *prima facie* case for approximately \$98,191.44, and  
11 Debtors will have additional time to rebut it.

12 False. Debtors did not defraud GPI, nor steal money from it. Nor were Debtors,  
13 officers, directors, or agents of GPI. They merely had a contractual relationship  
14 with it.

15 4. **Whether Debtors have committed conversion against Plaintiffs [GPI and**  
16 **FFI] by stealing Plaintiffs' farm equipment.**

17 No conversion of any property was proven.

18 5. **Whether Debtors have breached their lease covenant to Plaintiffs [GPI] of**  
19 **peaceful possession and quiet enjoyment of the January 1, 2002, and July 1,**  
20 **2002, leases by flooding the lease ground, running tractors on the lease**  
21 **ground, destroying leased property, building unnecessary ditches and**  
22 **interfering with Plaintiff's ability to irrigate.**

23 Yes. An injunction will be entered. No monetary damages were proven.

24 6. **Whether Debtors have committed trespass against Plaintiff's [GPI] leasehold**  
25 **by entering the leased property with force and violence.**

26 Partially true. Trespass occurred, but there was no evidence of either force or  
violence.

7. **Whether Plaintiffs are entitled to have the preliminary injunction made**  
permanent enjoining Debtors from (1) interfering with Plaintiffs' peaceful  
and quiet enjoyment of its lease ground (2) interfering with Plaintiffs' ingress  
and egress to the leased ground, and (3) in any way interfering with  
Plaintiffs' farming of the leased ground.

Yes. GPI is entitled to an injunction lasting through the duration of its leases with  
Debtors.

1  
2 **8. The amount of damages Plaintiffs are entitled to recover upon proof of theft, fraud, conversion, breach of covenant of quiet enjoyment and trespass.**

3 Theft. Not proven.

4 Fraud. Not proven.

5 Conversion. Not proven.

6 Quiet enjoyment. Proven. Injunctive relief only. No damages.

7 Trespass. Proven. Injunctive relief only. No damages.

8  
9 **9. Whether Debtors owe Plaintiffs over \$178,000 for the last two farming seasons.**

10 This issue is deferred so that accountants may attempt to settle the issue amicably.

11  
12 **10. Whether Plaintiffs are entitled to an award of punitive damages.**

13 No.

14  
15 **11. Whether Plaintiffs are entitled to an award of attorneys' fees.**

16 No. Each party partially prevailed and failed. Each will bear their own costs and fees.

17 **B. Defendants/Counterclaimants.**

18 **1. Whether Griffin Produce has paid Leroy and Wanda Heile the rent and water/irrigation charges due July 1, 2004 pursuant to the November 19, 2002 Lease?**

19 Yes. All rent paid. No evidence that water charges were unpaid. Debtors may immediately access the \$312,281.88 for rent and water at Yuma County Superior Court.

20  
21 **2. What is the amount of rent and water/irrigation charges Griffin Produce owes Leroy and Wanda Heile as of July 1, 2004 for the November 19, 2002 Lease?**

22 \$312,281.88. This amount timely paid and held by Yuma County Clerk.

1 **3. Whether Griffin Produce is indebted to Leroy and Wanda Heile for farming**  
2 **services provided by the Heiles to Griffin Produce through completion of the**  
3 **2003-2004 winter produce season?**

4 Decision deferred pending settlement discussions.

5 **4. If Griffin Produce is indebted to the Heiles for farming services through the**  
6 **completion of the 2003-2004 winter produce season what is the amount due**  
7 **the Heiles?**

8 Decision deferred.

9 **5. Whether Griffin Produce is indebted to Leroy and Wanda Heile for farm**  
10 **preparation services completed by the Heiles prior to July 22, 2004 on the**  
11 **leaseholds now occupied and controlled by Griffin Produce?**

12 If this refers to the extras, then all that the Debtors are entitled to, at the present  
13 time, is the \$38,966.59 on deposit with the Yuma County Superior Court Clerk,  
14 pending further settlement discussions. The balance of this issue is deferred.

15 **6. If Griffin Produce is indebted to the Heiles for farm preparation services**  
16 **completed by the Heiles prior to July 22, 2004, what is the amount due the**  
17 **Heiles?**

18 \$38,966.59 immediately. Balance, if any, deferred pending settlement  
19 discussions.

20 **7. Whether Griffin Produce, its agents or representatives, solicited the Heiles**  
21 **Lessors/Landlords to refuse to negotiate in good faith**  
22 **renewals/extensions/rights of first refusal with the Heiles?**

23 No. Debtors failed to prove this allegation.

24 **8. If Griffin Produce, its agents, or representatives unlawfully solicited the**  
25 **Heiles Lessors/landlords to refuse to negotiate in good faith**  
26 **renewals/extensions/rights of first refusal with the Heiles, the amount of**  
damages the Heiles are entitled to as the result of Griffin's conduct?

Not applicable in view of the answer to No. 7 above.

**9. Leroy and Wanda Heile are farmers and derive their income from farming**  
**operations.**

This "issue" is only a statement, which the court takes to be true based on the  
evidence presented.

1  
2 10. **Leroy and Wanda Heile are current on the lease payments to the landlords**  
3 **from whom the Heiles lease ground, [and in turn sublease] to Griffin**  
4 **Produce.**

5 True. They are current.

6 **V. STATEMENT OF CONTESTED ISSUES OF LAW.**

7 **A. Plaintiffs**

8 **COMPLAINT**

9 **1. Whether Debtors committed embezzlement.**

- 10 ■ No as to FFI "secret profits."  
11 ■ True as to FFI checks written for Debtors' personal use or use for their  
12 entities. *Prima facie* case for approximately \$98,191.44, subject to  
13 rebuttal opportunity.

14 **2. Whether Debtors committed breach of fiduciary duty.**

15 Yes. See No. 1 above as to FFI checks.

16 **3. Whether Debtors committed theft.**

17 No.

18 **4. Whether Debtors committed breach of contract.**

19 No. Except for the brief period when they thought they had a right to declare GPI  
20 in default. No damages proven.

21 **5. Whether Debtors committed trespass.**

22 Yes. No damages proven.

23 **6. Whether Debtors committed conversion.**

24 No.  
25  
26

1 7. **Whether Debtors committed breach of the covenant of peaceful and quiet**  
2 **enjoyment.**

3 Yes.

4 8. **Whether Debtors committed failure to account.**

5 No. Not proven or raised.

6 9. **Whether Plaintiffs are entitled to a permanent injunction.**

7 Yes, through periods of current leaseholds with Debtors.  
8

9 **COUNTERCLAIM**

10 1. **Whether Plaintiffs are entitled to a set off.**

11 No, not yet proven. However, this issue relates to those matters on which a  
12 decision has been deferred, pending settlement talks.

13 2. **Whether Debtors have unclean hands.**

14 Equities of the case do not require invoking this maxim.

15 3. **Whether Debtors acted in bad faith.**

16 No. Unclear as to what issue this relates.  
17

18 4. **Whether Debtors breached their fiduciary duty to Plaintiffs.**

19 Yes, as to FFI on the various checks to related entities or others. So far, only  
20 *prima face* case presented for approximately \$198,191.44.

21 5. **Whether an agreement was ever reached for Debtors to farm for the 2004-**  
22 **2005 season.**

23 No. Debtors breached this agreement when they walked away from contract and  
24 abandoned it when they stated they would not farm. See Ex. 28, 29, 42, 48, 98,  
25 83. GPI was within its legal rights to then terminate its farming contract  
26 (paragraph 6, Ex. 16 and 17), which had required it to utilize Debtors or Horizon  
Farms.

1 **6. Whether Plaintiffs' actions relating to the leases are privileged.**

2 GPI's actions in discussing future rental of acreage with the primary lessors was  
3 privileged.

4 **7. Whether Debtors are estopped from making a claim.**

5 Estoppel was insufficiently raised, if raised at all as applying to Debtors' conduct.

6 **8. Plaintiffs allege payment.**

7 As to the last rental payment, as adjusted, in the amount of \$312,281.88, plaintiff  
8 GPI is correct. As for the "extras," discussions are continuing, and a decision  
9 thereon is deferred.

10 **B. Defendants/Counterclaimants**

11 **1. Whether Griffin Produce's actions in failing to pay the July 1, 2004 rent and**  
12 **water payments or for the farming services provided by the Heiles to Griffin**  
13 **Produce constitute breach of contract?**

14 No breach proven on either count. GPI attempted a tender, which was wrongfully  
15 refused by Debtors. GPI has paid the rent and water charges. The farming  
16 charges were in *bona fide* dispute.

17 **2. Whether Leroy and Wanda Heile have a legal right under the leases to farm**  
18 **the leaseholds?**

19 No, they do not have such a right. The lands are leased to GPI, which is not in  
20 breach of the leases.

21 **3. If Leroy and Wanda Heile have a legal right to farm the leaseholds, whether**  
22 **Griffin Produce's failure to allow the Heiles to farm the leaseholds is a**  
23 **material breach of the leases?**

24 The Debtors have no legal right to farm the leased land at issue.

25 **4. Whether or not Leroy and Wanda Heile are entitled to immediate possession**  
26 **of the leaseholds as property of the Heiles Chapter 11 Estate pursuant to 11**  
**U.S.C. §§ 541 and 542?**

No. GPI may remain in possession. 11 U.S.C. § 365(h)(ii).

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**5. Whether or not Griffin Produce's actions constitute a breach of the Leases entitling Leroy and Wanda Heile to immediate possession of the leaseholds?**

No.

**6. Whether Griffin Produce is legally obligated under the principle of unjust enrichment for the 2003/2004 winter produce season to the Heiles for the farm preparation costs/expenses incurred by the Heiles through July 22, 2004 to prepare the leaseholds now occupied by Griffin Produce in advance of the 2004-2005 winter produce season?**

The Debtors are not entitled to any "extras" beyond \$38,966.59, except what they can negotiate in good faith in settlement discussions. This issue is deferred.

**7. Whether or not Griffin Produce's communications and actions with respect to Leroy and Wanda Heiles' Lessors/Landlords constitutes intentional interference with contract?**

No cause of action was proven. GPI has a legal right to compete for the leases in a free market for the period when the leasehold periods expire. Any claim for breach of "failure to negotiate" or failure to offer a "right of first refusal" is between the Debtors and those landlords with whom they had such contracts.

**8. Whether Leroy and Wanda Heile are entitled to punitive damages from Griffin Produce as the result of Griffin Produce's intentional interference with contract?**

No.

**9. Whether Leroy and Wanda Heile are entitled to attorney's fees and costs?**

No.

**SUMMARY OF RULING**

Legal Theory	Claimant(s)	Ruling
"Secret Profits" (Theft of Corporate Opportunity; Breach of Contract)	GPI; FFI	Judgment for Debtors; claim dismissed.
"Pass-Throughs" (Theft of Corporate Opportunity; Breach of Contract)	GPI	Judgment for Debtors; claim dismissed.
Fraud	GPI	Judgment for Debtors; claim dismissed.
Breach of Contract (Possession)	GPI; Debtors	Judgment for GPI; GPI entitled to remain in possession of leased lands.
Breach of Contract (Lease Payments)	Debtors	Judgment for GPI; lease payments paid timely and available through Clerk of Court. Contract modified proportionately by reduction in leased land. Debtors may obtain \$312,281.88 immediately.
Injunction	GPI	Judgment for GPI; injunction granted through balance of lease terms.
Embezzlement; Breach of Fiduciary Duty	FFI	<i>Prima facie</i> case proven for \$98,191.44 against Debtors. Continued for rebuttal proof.
Breach of Contract ("Extras")	Debtors	Deferred for settlement attempt.
Conversion	GPI	Judgment for Debtors; claim dismissed.
Trespass	GPI	Judgment for GPI; injunction granted; no damages.
Destruction of Property	GPI	Judgment for GPI; injunction granted; no damages.
Interference With Contractual Relations	Debtors	Judgment for GPI.
Punitive Damages	Debtors; GPI	Claims dismissed.
Attorneys' Fees and Costs	Debtors; GPI	Claims dismissed.

1 **DIRECTIVE**

2  
3 The parties are requested to meet and confer and present a form of judgment consistent  
4 with this memorandum decision within ten (10) days from the date of entry hereof. Mr. Clark shall  
5 prepare the first draft and accept helpful suggestions from Mr. Olsen. If the parties cannot agree, each  
6 is requested to present dueling judgments. Thereafter, the court will draft its own form of judgment.<sup>2</sup>  
7

8 DATED: September 15, 2004.

9  
10   
11 JAMES M. MARLAR  
UNITED STATES BANKRUPTCY JUDGE

12 COPIES mailed this 16 day of  
13 September, 2004, to:

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15 Clark & Moore  
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20 U.S. Trustee  
21 P.O. Box 36170  
22 Phoenix, AZ 85067-6170

23 By   
24 Judicial Assistant

25 <sup>2</sup> No claims were shown to exist against the fictitious entities. No other party besides those  
26 appearing herein was substituted in or served. Accordingly, all claims against such fictitious parties  
are dismissed.