

05-1092-CD

Deere Credit Inc. vs. David Gargasz

Deere Credit vs David Gargasz
2005-1092-CD

DEERE CREDIT, INC., : IN THE COURT OF COMMON PLEAS OF
Plaintiff : OF CLEARFIELD COUNTY, PENNSYLVANIA
 :
vs. : No. 05-1092-CD
 :
DAVID GARGASZ, :
Defendant : CIVIL ACTION – LAW

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

*David S. Meholick, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814)-765-2641 (ext. 5982)*

FILED July pd 85.00
m/2:43/11 cc shff
JUL 28 2005 LM

William A. Snow
Prothonotary Clerk of Courts

A V I S O

USTED HA SIDO DEMANDADO/A en corte. Si usted desea defenderse de las demandas que se presentan mas adelante en las siguientes paginas, debe tomar accion dentro de los proximos veinte (20) dias despues de la notificacion de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aqui en contra suya. Se le advierte de que si usted falla de tomar accion como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamacion o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin mas aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO
IMMEDIATA-MENTE. SI USTED NO TIENE UN ABOGADO O NO PUEDE PAGARLE A
UNO, LLAME O VAYA A LA SIGUIENTE OFICINA PARA AVERIGUAR DONDE PUEDE
ENCONTRAR ASISTENCIA LEGAL.

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DEERE CREDIT, INC.,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	OF CLEARFIELD COUNTY, PENNSYLVANIA
	:	
vs.	:	No.
	:	
DAVID GARGASZ,	:	
Defendant	:	CIVIL ACTION – LAW

COMPLAINT

1. Plaintiff, Deere Credit, Inc. (“Deere”), is a Delaware corporation doing business at 6400 NW 86th Street, Johnston, Iowa, 50131.

2. Defendant, David Gargas (“Gargas”), is an adult individual last residing at RR 1 Box, 244, Woodland, Clearfield County, Pennsylvania.

3. Deere is in the equipment leasing business and authorized to bring this action pursuant to 15 Pa.C.S.A. § 4122(a)(8).

COUNT I – BREACH OF CONTRACT

4. Deere incorporates herein by reference paragraphs 1 through 3 above.

5. On June 19, 2001, Deere and Gargas entered into a written master lease agreement (the “Master Lease Agreement”) whereby Deere agreed to lease a John Deere 7810 Tractor to Gargas for a commercial purpose. Attached hereto as **Exhibit A** and incorporated herein by reference is a true and correct copy of the Master Lease Agreement.

6. The written Master Lease Agreement provides, among other things, that Gargas would make thirty-six monthly payments to Deere in the amount of \$1,175 starting on July 14, 2001 and continuing each month thereafter until June 14, 2004.

7. Gargas defaulted under the written Master Lease Agreement by failing to make regular payments to Deere since January 14, 2003 and has only paid \$21,325 thereunder.

8. A deficiency in the amount of \$20,975 remains due and owing under the Master Lease Agreement as of July 15, 2005.

9. Gargasz has breached the written Master Lease Agreement by failing to pay Deere all sums due and owing thereunder.

WHEREFORE, Deere Credit, Inc. requests this Court to enter judgment in its favor in the amount of \$20,975 along with interest from and following July 15, 2005, costs and reasonable attorney fees against David Gargasz for his breach under the written Master Lease Agreement.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

Date: July 25, 2005

By



Clayton W. Davidson, Esquire

P.A. Id. No. 79139

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone: (717) 232-8000


Fax: (717) 237-5300

cdavidson@mwn.com

Attorneys for Deere Credit, Inc.

VERIFICATION

I, Doug Dunek, Litigation Administrator of Deere Credit, Inc., hereby verify that I am authorized to make this Verification on its behalf and that the facts contained in the attached document are true and correct to the best of my knowledge, information and belief and that the same are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Doug Dunek

John Deere Master Lease Agreement

LESSEE'S NAME (Last Name First) & MAILING ADDRESS (Including Zip Code) DAVID GARGASZ	LEASE NUMBER 53801-2
RR1 BOX 244	LESSEE'S SOC. SEC. NO. (First Signer) OR TAX IDENTIFICATION NO. IF CORPORATION 168386373
	COUNTY LOCATION CLEARFIELD
WOODLAND, PA 16881	LESSOR'S NAME & ADDRESS (Including Zip Code)
LESSEE'S NAME (Last First Name) & MAILING ADDRESS (Including Zip Code)	DEERE CREDIT, INC. 6400 NW 86 TH Street PO Box 6600 Johnston, IA 50131-6600

1. TERM-LEASE PAYMENTS

Lessor leases to Lessee, and Lessee leases from Lessor, the equipment described in one or more Schedules, attached to and incorporated into this Lease, executed by Lessor and Lessee from time to time, for the period specified in each such Schedule (the "Lease Term"). (The term "Equipment" as used herein shall refer collectively to the equipment described in all Schedules.) A Schedule may provide for one or more Renewal Terms in addition to the initial Lease Term. If Renewal Terms are provided for, the Schedule will automatically renew for the Renewal Term(s) unless Lessee gives Lessor written notice of its intent not to renew at least 60 days prior to the end of the appropriate term. If Lessor receives such notice, the Schedule shall be terminated on the date the present term expires.

Lessee agrees to pay Lessor Lease Payments in accordance with the payment schedules shown on the various Schedules. If Renewal Terms are provided for, the Schedules will also provide for Lease Payments during the Renewal Terms. Any Lease Payment not made when due shall bear interest from its due date until paid at the highest rate permitted by law. Any Lease Payment received from Lessee may be applied, at Lessor's choice, to what Lessee owes under this Lease or under any other lease agreement between Lessee and Lessor, in spite of any instructions from Lessee.

2. OPTION TO PURCHASE

Provided Lessee is not in default under any provision of this Lease Agreement or any Schedule, at the expiration of the Lease Term or any Renewal Term (if applicable), Lessee shall have the option to purchase any particular piece of Equipment for the Option Purchase Price set forth on the applicable Schedule or, if no Option Purchase Price is so set forth, for its fair market value at the time the option is exercised. If Lessee fails to exercise the option to purchase on or before expiration of the Lease, the Option Purchase Price shall be revoked. Fair market value will be determined by Lessor with reference to recent sales of used Equipment of similar type and condition.

Lessee must notify Lessor in writing not less than 60 days prior to the end of the Lease Term or Renewal Term (if applicable) that Lessee intends to exercise this Option to Purchase. Lessor will send to Lessee applicable sale documents to be executed in consummation of sale. Any applicable sales tax shall be added to the Option Purchase Price in accordance with the laws of the state of Lessee's business operation.

3. ASSIGNMENT

LESSEE SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR, (A) ASSIGN, TRANSFER OR PLEDGE THIS LEASE, THE EQUIPMENT OR ANY PART THEREOF, OR ANY INTEREST THEREIN, OR (B) PERMIT THE EQUIPMENT OR ANY PART THEREOF TO BE USED BY ANYONE OTHER THAN LESSEE OR LESSEE'S EMPLOYEES. Lessor may assign its right to purchase or sell the Equipment at any time. Any assignment without such consent shall be void. Lessee's obligation to pay rent under this Lease shall not, as to any assignee of Lessor, be subject to any diminution arising out of any breach of any obligation of Lessor hereunder or other liability of Lessor to Lessee.

4. RETURN OF EQUIPMENT

With respect to each piece of Equipment, upon early termination of this Lease or if the above option to purchase is not exercised, at the expiration of the term of this Lease, Lessee shall return the Equipment, at Lessee's expense, to Lessor at a place designated by Lessor no more than 50 miles from the place of delivery shown on the applicable Schedule. The Equipment, when returned, shall be in as good condition as it is when delivered to Lessee, reasonable wear thereof excepted. Reasonable wear of tires and undercarriage, as applicable, shall be interpreted as 50% remaining useful life upon return of Equipment.

Upon termination of this Lease, if any option to purchase is not exercised and Lessee fails to return the Equipment as described above, Lessee shall be obligated to make monthly payments to Lessor which shall be equal to the greatest payment amount provided for in the terminated Schedule. This obligation shall continue until Lessor regains possession of the Equipment.

5. EARLY TERMINATION

Provided Lessee is not in default under any provision of this Lease, Lessee may request that this Lease be terminated prior to the expiration of the term of this Lease with respect to the Equipment or any item thereof. If such request is made Lessor and Lessee will use reasonable efforts to arrange for a sale to a third party. This Lease shall be continued until such a sale is consummated (or until the term of this Lease expires, whichever is earlier) and Lessee shall continue to make Lease Payments. Lessee shall return the Equipment to Lessor as provided in Section 4 and pay to Lessor the excess, if any, of the Termination Value on the date of sale over the net sale price (after deducting all costs and expenses incurred by Lessor in connection with the sale) received or to be received by Lessor.

6. DEFAULT

Lessee shall be in default under this Lease if any of the following events occur:

- 6.1 Lessee fails to make any Lease Payment or pay other sums due hereunder within ten (10) days after the same shall become due.
- 6.2 Lessee fails to maintain any insurance required hereunder in effect or fails to comply with the requirements of any such insurance.
- 6.3 Lessee, without Lessor's prior written consent, attempts to assign this Lease or voluntarily or involuntarily removes the Equipment from the United States, or sells, transfers, encumbers, parts with possession of or sublets any item of Equipment.
- 6.4 Lessee shall commit an act of bankruptcy or become insolvent or bankrupt, shall make an assignment for the benefit of creditors, shall cease doing business as a going concern, if bankruptcy, reorganization or insolvency proceedings are instituted by or against Lessee, or if Lessee shall suffer an adverse material change in its financial condition which causes Lessor to deem itself or any of the Equipment to be insecure.
- 6.5 Lessee fails to perform or observe any other covenant or condition herein and such failure continues for a period of ten (10) days after written notice thereof is sent to Lessee by Lessor.

7. REMEDIES OF LESSOR

Upon default of Lessee, under this Lease or under any other lease agreement between Lessee and Lessor, Lessor may, without notice to or demand upon Lessee, exercise any one or more of the following remedies:

- 7.1 Declare all unpaid rent for the full term of this Lease immediately due and payable, together with all expenses of collection by suit or otherwise, including reasonable attorney's fees.
- 7.2 Terminate this Lease immediately with respect to the Equipment or any portion thereof and/or terminate any other lease agreement between Lessee and Lessor.
- 7.3 Take possession of the Equipment (which Lessee shall surrender on demand).
- 7.4 Sell the Equipment or any portion thereof at public or private sale and without demand on Lessee for payment or notice of intention to sell, retain the proceeds of any such sale, and, unless previously terminated under Section 7.2, terminate this Lease as of the date of such sale. If the proceeds, after deducting all costs and expenses incurred in connection with the recovery, repair, storage and sale of the Equipment and after deducting any Lease Payments and other obligations of Lessee not yet paid hereunder on the date of the sale, including interest on past due Lease Payments, are less than the Termination Value on the date of termination, Lessee shall immediately pay Lessor the difference.
- 7.5 Exercise any other remedy provided by law, including the recovery of damages caused by Lessee's failure to perform or observe any covenant or condition of this Lease.

(Continued on Reverse Side)

ADDITIONAL PROVISIONS CONCERNING RIGHTS OF THE PARTIES ON REVERSE SIDE ARE A PART OF THIS AGREEMENT

NOTICE: THE DEALER HAS NO AUTHORITY TO MAKE ANY REPRESENTATION OR PROMISE ON BEHALF OF LESSOR OR TO MODIFY THE TERMS OF THIS LEASE IN ANY WAY.

LESSEE'S
NAME DAVID GARGASZ

(Lessee's Signature) DAVID GARGASZ, PRESIDENT

(Lessee's Signature)

(Lessee's Signature)

(Lessee's Signature)

LESSOR'S
NAME DEERE CREDIT, INC.

(Authorized Signature)

(Date Signed)

(Date Signed)

(Date Signed)

DATE ACCEPTED: 7-17-01

8. **NEW EQUIPMENT WARRANTY** Lessee acknowledges and agrees (a) that the Equipment was selected by Lessee; (b) that Lessee is satisfied that the same is suitable for its purpose; (c) that Lessor is not a manufacturer thereof nor a dealer in property of such kind; and (d) **THAT LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE ANY REPRESENTATION OR WARRANTY OR COVENANT WITH RESPECT TO THE MERCHANTABILITY, AND CONDITION, QUALITY, DESCRIPTION, DURABILITY, OR SUITABILITY OF ANY SUCH UNIT IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE.** Lessor hereby assigns to Lessee, to the extent assignable, any warranties, covenants, and representations of the vendor with respect to the Equipment, provided that any action taken by Lessee by reason thereof shall be at the sole expense of the Lessee and shall be consistent with Lessee's obligations pursuant to the terms of this agreement.

9. **INSURANCE**

9.1 Lessee, at its own expense, will carry public liability insurance having an endorsement for contractual liability on the Equipment with minimum liability limits in the amounts of \$1,000,000 per occurrence for bodily injury, including death, and in the minimum amount of \$250,000 per occurrence for property damage.

9.2 Lessee, at its own expense, shall keep the Equipment insured against all risk of physical damage for no less than its actual cash value. Such insurance shall include a loss payable clause made out in favor of Lessor.

9.3 Lessee shall deliver to Lessor Certificates or other evidence satisfactory to Lessor that insurance is maintained as required under Sections 9.1 and 9.2. If Lessee fails to deliver such Certificates or other evidence of insurance to Lessor upon request, Lessor shall have the right, but shall not be obligated, to purchase such insurance and Lessee will reimburse Lessor for the cost thereof upon demand.

10. **LOSS OR DAMAGE TO EQUIPMENT**

All risk of loss or damage to the Equipment is assumed by Lessee until it is returned to Lessor at the expiration of the term of this Lease or such earlier termination as may occur under the provisions of Sections 5 and 7 of this Lease. If a damaged item is capable of being repaired for a cost less than its actual cash value, Lessee shall repair it at its own cost. The proceeds of any insurance which may become available as a result of damage to the Equipment may be applied to the repair of the Equipment or to payment of any obligation of Lessee hereunder, at the sole discretion of Lessor. Inadequacy of such insurance proceeds to cover the cost of repairs does not excuse or diminish Lessee's obligation to repair. If an item is lost, stolen, destroyed or damaged beyond repair, insurance proceeds shall be paid over to Lessor. Any salvage shall be disposed of as the Insurance Company and/or Lessor may elect. If the sum of the insurance proceeds and the salvage proceeds, if any, is less than the termination Value of the affected Equipment on the date of loss, Lessee shall promptly pay the difference to Lessor.

11. **LIABILITY**

Lessee assumes all risk and liability for and shall hold Lessor and its assigns harmless from all claims, liabilities or expenses for injuries or death to persons or loss or damage to property allegedly caused by the Equipment or arising out of the use, possession or transportation thereof. Lessee's liability hereunder shall not be limited to the amounts of insurance required under Section 9.

12. **FEES AND PROPERTY TAXES**

12.1 Lessor as owner is responsible for filing the requisite periodic reports with the appropriate taxing jurisdiction. If the location of the Equipment has been changed to another taxing jurisdiction or the exempt status of the Equipment has been changed, Lessee shall, in time for Lessor to file such a return or report, notify Lessor in writing regarding such changes at the following address:

DEERE CREDIT, INC.
TAX DEPARTMENT
JOHN DEERE ROAD
MOLINE, IL 61265

12.2 If Lessee fails to so furnish Lessor with the above information, Lessee agrees to promptly reimburse Lessor for any taxes, penalties, fines, or fees paid by Lessor arising from such failure.

12.3 Lessor as owner is responsible for the payment of all personal property taxes imposed on the Equipment. Lessee is responsible for the payment of all other taxes of any kind, and of all title fees, registration fees, license fees and all other similar charges of any kind imposed on the Equipment or its use. As stated in 12.1 above, Lessor as owner shall file a personal property tax return. Lessee shall be responsible for all other returns and reports required by law or otherwise permitted. If Lessor is required to file any returns or reports or pay any fees or taxes for which Lessee is obligated hereunder, Lessee shall promptly reimburse Lessor for its payment of said fees and taxes and shall pay any additional sales or use tax imposed on such reimbursements.

12.4 If Lessee is required by the jurisdiction to file returns or reports and pay fees or taxes, but fails to pay such fees or taxes when due, Lessor shall have the right, but not the obligation to pay such fees or taxes together with penalties or fines and Lessee will promptly reimburse Lessor for any amounts paid by Lessor.

12.5 In addition, the amount of any tax, fee, penalty or fine which is Lessee's responsibility but which Lessor pays, if not reimbursed to Lessor by Lessee within 30 days of demand by Lessor, shall bear interest at the highest contract rate permitted by law, from the time of payment by Lessor until paid by Lessee.

13. **INTENDED USE OF EQUIPMENT**

Lessee agrees that the Equipment will not be used for personal, family or household use.

14. **SERVICE AND USE**

Lessee agrees to care for the Equipment in a careful and prudent manner, to cause the Equipment to be operated and maintained in accordance with the manufacturer's operator's manuals, maintenance manuals, technical manuals, and other instructions concerning operation and maintenance, and to perform all maintenance and make any and all repairs which may be necessary to keep the Equipment in as good condition as it is when delivered to Lessee, reasonable wear thereof excepted. All maintenance and repairs shall be made at Lessee's expense unless covered by warranty or by insurance as provided in Section 9. Lessee shall comply with and conform to all laws and regulations relating to ownership, possession, use and maintenance of the Equipment and with all conditions of policies of insurance on the Equipment. Lessee will not install any accessory or device on the Equipment (except such as may be removed without in any way affecting the originally intended function or use of the Equipment). Lessor shall be entitled to inspect the Equipment at the location of Lessee during reasonable business hours. It is contemplated that the Equipment will not be operated for more than the maximum number of hours shown on the applicable Schedule, and Lessee agrees to pay the excess use charge shown on such Schedule for each hour the Equipment is used in excess of such time. If there is an hour meter furnished, Lessee agrees to keep it connected to the Equipment and in good working condition at all times and that it is to be used as the conclusive basis of the number of hours of operation.

15. **CONSTRUCTION**

This Lease shall not be construed as conveying to Lessee any right, title or interest in or to the Equipment or its proceeds except as Lessee. Except as provided in Section 2, all right, title and interest in and to the Equipment shall at all times remain in Lessor.

16. **DESIGNATION OF OWNERSHIP; FINANCING STATEMENT**

If at any time during the term hereof, Lessor supplies Lessee with labels, plates or other markings stating that the Equipment is owned by Lessor, Lessee shall affix and keep the same upon a prominent place on the Equipment. Lessee authorizes Lessor to file, or execute on Lessee's behalf and file a financing statement in order to perfect Lessor's interest in the Equipment and such statements or their filing shall not be deemed to negate the construction of this Lease as a lease. Lessee agrees to execute any and all additional instruments necessary to perfect Lessor's interest in this Lease, the payments due hereunder and the Equipment.

17. **SECURITY DEPOSIT**

If an amount is shown as a "Security Deposit" on any Schedule, Lessor may, but shall not be obligated to, apply the Security Deposit, or any portion thereof, to cure any default by Lessee, in which event Lessee shall promptly restore the Security Deposit to the full amount specified. Upon fulfillment by Lessee of all of the covenants and conditions of this Lease, including the obligation to reimburse Lessor for any amounts as set forth in Section 12, Lessor shall return to Lessee the amount of the Security Deposit, without interest.

18. **TERMINATION VALUE**

With respect to the Equipment, "Termination Value" shall equal the sum of (a) the amount of any rental or other payments which are due and unpaid on or before the date of the Early Termination or Casualty Occurrence, (b) the present value of the total of all Lease Payments for the present term (excluding any rental/use tax included in such Lease Payments) which are not due on the date of the return described in Section 10, (c) the present value of the stated Purchase Option, or the assumed Fair Market Value for a lease with no Purchase Option stated which was used in calculating payments due under the present term. The discount rate used to determine the present value required in this Section 18 shall be Lessor's internal rate of return used in calculating the lease payments less 2%. Upon Request, Lessor will advise Lessee of the amount of the Termination Value used in computing Lessee's obligations under Sections 5, 7, or 10.

19. **CONTROLLING LAW**

EXCEPT AS PROHIBITED BY THE LAW OF THE STATE OF LESSEE'S RESIDENCE, THE CONSTRUCTION AND VALIDITY OF THIS LEASE SHALL BE CONTROLLED BY THE LAW OF THE STATE OF IOWA, WHERE THIS LEASE IS ACCEPTED AND ENTERED INTO.

Lessee's Initials

MAINTENANCE ADDENDUM TO JOHN DEERE MASTER LEASE AGREEMENT

This Maintenance Addendum to John Deere Master Lease Agreement (the "Addendum") is entered into as of the 07day of May, 2001 between Deere Credit, Inc. (the "Lessor") and DAVID GARGASZ (the "Lessee").

RECITALS

A. Lessor and Lessee have previously entered into a John Deere Master Lease Agreement (together with all schedules attached thereto, the "Lease") pursuant to which Lessor has leased certain equipment (the "Equipment") identified in the Lease;

B. Pursuant to the terms of the Lease, Lessee is required to maintain the Equipment in good condition, ordinary wear and tear excepted and the Lessor and Lessee wish to define further the requirements of the Lease in relation to the maintenance provisions;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the parties agree as follows:

1. Capitalized terms not defined in this Addendum shall have the meaning provided to them in the Lease.

2. The parties agree that the maintenance requirements of the Lease are supplemented by the list of items attached to this Addendum as Exhibit A, which is incorporated herein by this reference. The parties acknowledge that the conditions described on Exhibit A will be deemed to be a violation of the requirements of the Lease, but the parties further agree that this list will not be exhaustive. If the Equipment is returned in violation of the maintenance requirements of the Lease, then Lessor will, at its election, have the right to either (i) charge Lessee with the cost which Lessor determines will be necessary to return the Equipment to its required condition or (ii) charge Lessee with the diminution in value, determined by Lessor, of the Equipment caused by Lessee's failure to comply with the maintenance requirements. For the purposes of this Addendum, the payment required in the preceding sentence shall be referred to herein as the "Maintenance Payment". Lessor may, to the extent it collected a security deposit, debit the security deposit with the amount of the Maintenance Payment. If Lessor did not collect a security deposit, or if the security deposit is insufficient, then Lessee shall promptly pay Lessor the difference between the required Maintenance Payment and the collected security deposit.

3. Except as expressly modified by the terms and conditions of this Addendum, the Lease remains in full force and effect. This Addendum constitutes the complete understanding of the parties hereto and supersedes all prior understandings of the parties relating to the matters discussed herein. This Addendum shall be governed by and construed in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date first above written.

Deere Credit Inc.
By: Trace Smith
Title: Secretary

DAVID GARGASZ
By: [Signature]
Title: [Signature]

RECEIVED
THROUGH US MAIL
MAY 21 2001
DEERE CREDIT INC.

EXHIBIT A

ITEMS WHICH CONSTITUTE VIOLATIONS OF MAINTENANCE STANDARDS

The following items constitute a violation of the maintenance requirements of the John Deere Master Lease Agreement (together with all schedules thereto, the "Lease"). This list is not intended to be an exhaustive list.

1. Mechanical Damage

- A. Computer systems or safety and emission control equipment not in proper working order.
- B. Mechanical components that are missing, broken or unsafe or that do not operate normally, other than normal tune-ups and battery replacement, given the age of the equipment.
- C. Wear on power train assembly that exceeds manufacturer's then current standards for normal wear and tear.
- D. Any air filters not within manufacturer's specifications.
- E. Any gauges or fluid indicators that are damaged or do not function, the electrical system fails to operate properly, the battery fails to hold a charge or any wire harnesses that are not tied down and kept secured, dry, clean and dust-free.
- F. Any pumps, motors, valves or cylinder not in good operating condition or that fail to meet manufacturer's rated specifications or hydraulic system exceeds manufacturer's then-current contaminant standards (as shown by oil sample analysis). Equipment must be serviced according to the manufacturer's operating manual.
- G. Any lubricant, water or A/C seals leak.

2. Exterior.

- A. Dents larger than 2 inches in diameter.
- B. Excessive number of dents or scratches.
- C. Any scratch 8" or longer that reaches the metal skin.
- D. Any single chip the size of a quarter or larger or multiple small chips within one square foot.
- E. Substandard paint repairs, such as peeling, bubbling or mismatched shades that evidence poor condition in comparison with original paint and require repainting at a cost in excess of \$200.
- F. Rust holes in the body metal or a rust spot that covers more than a 4-inch square area.
- G. Any glass that must be replaced due to cracks or missing glass and any windshield damages greater than \$50 in amount.
- H. All frame damage and substandard frame repairs.
- I. Any tires/tracks on returned Equipment that are in an unsafe condition, that have broken side walls, that are not original casings, that have less than 50% of original tread remaining, or that are not of the same size, type grade or manufacturer for equivalent quality manufacturer as were originally included on the Equipment.

3. Cab/Operator Platform.

- A. Heavy interior soil that cannot be removed by general cleaning.
- B. Unclean condition of operator environment.
- C. Holes, tears, or burns on the dash, floor covers, seats, headliners, upholstery or interior.

4. General; Other.

- A. Failure to operate and maintain the Equipment in accordance with the manufacturer's specifications or use of components, fuels or fluids, on or in connection with the Equipment that do not meet manufacturer's standards.
- B. Any other damage that in the aggregate costs \$250 or more to repair or that makes the Equipment unlawful or unsafe to operate.
- C. All warranty and PIPS work must be completed prior to the Termination Date of the Lease Schedule relating to the Equipment.
- D. The Equipment shall be cleaned prior to its return.

Deere Credit shall be responsible for determining the existence of the damage and shall endeavor to repair the damage in an economically reasonable fashion that is consistent with then established business practices of Deere Credit.

RECEIVED
THROUGH US MAIL

SEP 21 2005
DEERE CREDIT INC.



MASTER LEASE SCHEDULE

LESSEE NAME & ADDRESS DAVID GARGASZ RR1 BOX 244 WOODLAND, PA 16881		LEASE NUMBER 53801-3	ACCOUNT #, SS# OR TAX ID # 168386373				
CO-LESSEE NAME & ADDRESS		ACCOUNT #, SS# OR TAX ID #					
SUPPLIER'S (DEALER'S) NAME & ADDRESS (Place of Delivery) DUNKLE & GRIEB INC. RD 2 BOX 14 CENTRE HALL, PA 16828		DEALER ACCOUNT NO. -33403-3-0621					
LESSOR DEERE CREDIT, INC., 6400 NW 86TH STREET, JOHNSTON, IA 50131							
Equipment Description							
QTY	Manuf.	Model	Equipment Description	Serial #	Max hrs	Excess Chrg	Hr. Meter
1	JD	7810	JOHN DEERE 7810 TRACTOR	RW7810A038593	300/YR	30.00/HR	0
EQUIPMENT LOCATION							
City WOODLAND		State PA		EQUIPMENT USAGE		PHYSICAL DAMAGE INSURANCE	
County CLEARFIELD		Zip Code 16881		<input checked="" type="checkbox"/> Agricultural <input type="checkbox"/> Commercial		<input type="checkbox"/> John Deere Insurance Purchased <input checked="" type="checkbox"/> Proof of Insurance Attached	
Check here if OUTSIDE city limits: <input checked="" type="checkbox"/>							
Payment Information							
Commencement Date	Termination Date	PO Price	# of Payments	Lease Payment	Use Tax	Total Lease Payment	
05/07/2001	05/07/2004	\$62,250.99	36	\$1,175.00		\$1,175.00	
06/14/01	6/14/04						
<input checked="" type="checkbox"/> MONTHLY PAYMENTS							
DATE MONTHLY PMTS BEGIN 05/07/2001		Payments are due on day : 07					
<input type="checkbox"/> PAYMENTS OTHER THAN MONTHLY							
ADVANCE LEASE PAYMENT \$2,350.00							
Advance includes the first 1 payment(s) and last 1 payment(s)							
SECURITY DEPOSIT 0.00		LESSEE HEREBY DEPOSITS WITH LESSOR THE SUM SHOWN AT THE LEFT AS A SECURITY DEPOSIT FOR THE FAITHFUL PERFORMANCE BY LESSEE OF THE COVENANTS AND CONDITIONS OF THE LEASE					
Signatures							
Lessor: DAVID GARGASZ		Co-Lessee:					
By: [Signature] Date: 6-14-01		By: [Signature] Date: [Blank]					
DAVID GARGASZ, PRESIDENT							
By: [Blank] Date: [Blank]		By: [Blank] Date: [Blank]					
By: [Blank] Date: [Blank]		By: [Blank] Date: [Blank]					
By: [Blank] Date: [Blank]		By: [Blank] Date: [Blank]					
Lessor: Deere Credit, Inc.		By: [Signature]		Title: [Signature]		Date: 7-17-01	
Delivery Acknowledgments							
The equipment listed above and Operator's Manuals were received on this date and the safe operation and the proper servicing of the Equipment were explained to me. I have also received the written warranty applicable to the Equipment and understand that my rights are limited as set forth therein.							
OPERATOR'S MANUAL ISSUE #		LESSEE'S SIGNATURE				DATE	
		[Signature]				6-14-01	
The Equipment listed above was carefully prepared for delivery, inspected and adjusted according to factory recommendations before delivery to lessee. Operation and service of the Equipment and the importance of following the instructions in the Operator's Manual were explained to lessee.							
DEALER SIGNATURE						DATE	
[Signature]						6-14-01	

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DEERE CREDIT, INC.,

Plaintiff

vs.

DAVID GARGASZ,

Defendant

No. 2005-1092-CD

Type of Pleading: Defendant's Answer,
New Matter

Filed on Behalf of: Defendant

Counsel of Record for this Party:

Kim C. Kesner, Esquire
Supreme Ct. I.D. 28307
23 North Second Street
Clearfield, PA 16830
814-765-1706
814-765-7006

Counsel of Record for Plaintiff:

Clayton W. Davidson, Esquire
P.A. Court I.D. 79139
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
717-232-8000
717-237-5300 FAX

FILED 3cc
OCT 07 2005
Att'y Kesner

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DEERE CREDIT, INC.
Plaintiff

vs.

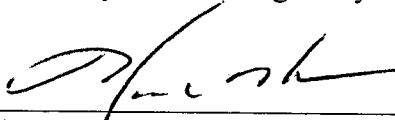
DAVID GARGASZ,
Defendant

:
:
:
: No. 05-1092-CD
:
:
:

NOTICE TO PLEAD

TO: Deere Credit, Inc.

You are hereby notified to file a written response to the enclosed New Matter within
twenty (20) days from service hereof or a judgment may be entered against you.



Kim C. Kesner, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DEERE CREDIT, INC.	:
Plaintiff	:
vs.	:
	: No. 05-1092-CD
DAVID GARGASZ,	:
Defendant	:

ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. The averments contained in paragraph 4 require no response.
5. Admitted.
6. Admitted.

7. It is specifically denied that Gargasz failed to make regular payments to Deere and/or defaulted under the Master Lease Agreement. To the contrary, Gargasz believes and therefore avers that he made sufficient and satisfactory payment to Deere including a payment on December 5, 2002. However, Deere had multiple concurrent transactions with Gargasz and at points prior to December 2002, misapplied payments made. Gargasz had correspondence with James Markel of the Deere dealer Dunkle and Greib on December 20, 2002 for the purpose of confirming payments made. Thereafter, in December of 2002, without notice that it considered the Lease breached, Deere took possession of the leased tractor on the same date that it took possession of nine other pieces of equipment subject to other transactions and agreements with Deere. Gargasz believes and therefore avers that in doing so Deere breached the Master Lease Agreement and unlawfully took possession of the equipment.

8. For the reasons set forth in paragraph 7 above, Gargasz specifically denies that a deficiency remains due and owing to Deere under the Master Lease Agreement.

9. For the reasons set forth in paragraph 7 above, Gargasz specifically denies that he breached the written Master Lease Agreement.

WHEREFORE, Gargasz respectfully requests this Honorable Court to enter judgment in his favor dismissing Deere's Complaint.

NEW MATTER

10. Deere's prayer for relief in its Complaint requests judgment for "reasonable attorney's fees".

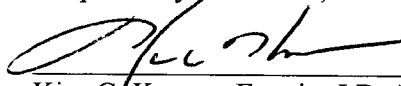
11. The Complaint lacks any averments supporting this prayer for relief.

12. Deere's Complaint contains no averment of attorney's fees incurred or other basis for calculating an award.

13. Deere's Complaint fails to state a claim or cause of action upon which the relief of attorney's fees can be granted.

WHEREFORE, Gargasz respectfully requests this Honorable Court to enter judgment in his favor against Deere on Deere's request for attorney's fees.

Respectfully submitted,



Kim C. Kesner, Esquire I.D. #28307

Attorney for Defendant

23 North Second Street

Clearfield, PA 16830

(814) 765-1706

(814) 765-7006

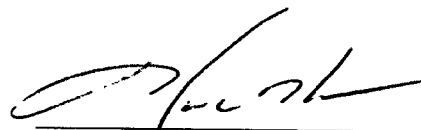
Date: October 7, 2005

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 7th day of October, 2005, I caused to be served a true and correct copy of the Answer and New Matter by U.S. First Class Mail, Postage Prepaid on the following:

Clayton W. Davidson, Esquire
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166

Date: October 7, 2005

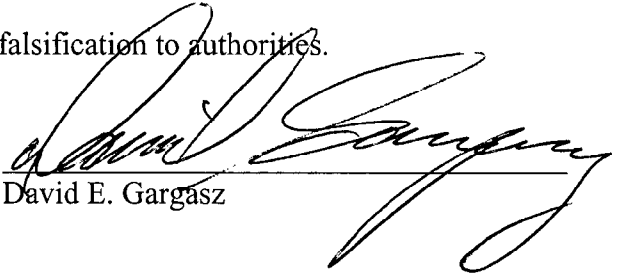


Kim C. Kesner, Esquire

VERIFICATION

I, David E. Gargasz, verify that the statements made in this foregoing Answer and New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 , relating to unsworn falsification to authorities.

Date: 10-7-05



David E. Gargasz

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DEERE CREDIT INC.,

PLAINTIFF

VS.

DAVID GARGASZ,

DEFENDANT

DEFENDANT'S ANSWER, NEW MATTER

KIM C. KESNER
ATTORNEY AT LAW
23 North Second Street
CLEARFIELD, PA 16830
(814) 765-1706

FILED

OCT 07 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100679
NO: 05-1092-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: DEERE CREDIT INC.

vs.

DEFENDANT: DAVID GARGASZ

SHERIFF RETURN

NOW, August 12, 2005 AT 11:20 AM SERVED THE WITHIN COMPLAINT ON DAVID GARGASZ DEFENDANT AT RR#1 BOX 244, WOODLAND, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DAVID GARGASZ, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

FILED
9/4/05
DEC 02 2005


William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	MCNEES	141208	10.00
SHERIFF HAWKINS	MCNEES	141208	22.05

Sworn to Before Me This

_____ Day of _____ 2005

So Answers,


by Maury Hays
Chester A. Hawkins
Sheriff

DEERE CREDIT, INC.,
Plaintiff
vs.
DAVID GARGASZ,
Defendant

:
:
:
:
:
:

IN THE COURT OF COMMON PLEAS OF
OF CLEARFIELD COUNTY, PENNSYLVANIA
No. 05-1092-CD
CIVIL ACTION – LAW

PRAECIPE TO SETTLE AND DISCONTINUE WITH PREJUDICE

TO THE PROTHONOTARY:


Please settle and discontinue the above captioned action with prejudice.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

Date: May 4, 2006

By



Clayton W. Davidson
Attorney I.D. 79139
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cdavidson@mwn.com
Phone: (717) 232-8000

Attorney for Deere Credit, Inc.

FILED

MAY 08 2006

William A. Shaw
Prothonotary/Clerk of Courts

SENT TO ATT

SENT OF DISC. TO

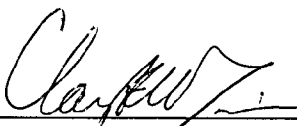
ATTY + C/P

CERTIFICATE OF SERVICE

The undersigned hereby certifies on this day that a true and correct copy of the attached document was served by first-class United States mail, postage prepaid, addressed as follows:

Kim C. Kesner, Esquire
23 North Second Street
Clearfield, PA 16830

Date: May 4, 2006



Clayton W. Davidson, Esquire

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

CIVIL DIVISION

Deere Credit, Inc.

Vs.

No. 2005-01092-CD

David Gargas

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on May 8, 2006, marked:

Settle and Discontinue with prejudice

Record costs in the sum of \$117.03 have been paid in full by McNees Wallace & Nurick, LLC.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 8th day of May A.D. 2006.

William A. Shaw, Prothonotary