

05-1093-CD  
Deere & Co. vs David Gargas

Deere & Co vs David Gargas  
2005-1093-CD

DEERE & COMPANY,  
Plaintiff  
vs.  
DAVID GARGASZ,  
Defendant

:  
:  
:  
:  
:  
:  
:

IN THE COURT OF COMMON PLEAS OF  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
No. *05-1093-CD*  
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 *ccshff*  
*m/2:52 PM*  
JUL 28 2005 *Any pd 85.00*

William A. Shaw  
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 ABODAGO 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.

*David S. Meholick, Court Administrator  
Clearfield County Courthouse  
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DEERE & COMPANY,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	OF CLEARFIELD COUNTY, PENNSYLVANIA
	:	
vs.	:	No.
	:	
DAVID GARGASZ,	:	
Defendant	:	CIVIL ACTION – LAW

### **COMPLAINT**

1. Plaintiff, Deere & Company (“Deere”), is a Delaware corporation doing business at 6400 NW 86<sup>th</sup> 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 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, Gargas borrowed the sum of \$212,622.26 (the “Loan”) from Landis Bros., Inc. to purchase a John Deere Harvester, John Deere pickup and John Deere row crop (collectively the “Collateral”) for a commercial purpose and immediately thereafter the parties executed a written Loan Contract – Security Agreement (the “Agreement”) evidencing the loan and granting Landis Bros., Inc. a security interest in the Collateral. Attached hereto as **Exhibit A** and incorporated herein by reference is a true and correct copy of the Agreement.

6. On January 31, 2002, the Agreement was assigned by Landis Bros., Inc. to Deere.

7. The Agreement provides that Gargas would make four annual payments to Deere of \$42,568.05 on December 1, 2002, December 1, 2003, December 1, 2004 and December 1, 2005 and thereafter a final payment of \$42,568.05 on December 1, 2006.

8. Gargasz breached the written Agreement by not making any payments to Deere and thereafter, Deere relieved the Collateral.

9. In May, 2003, Deere sold the Collateral by private sale to a third party for the sum of \$178,005.00 to satisfy the indebtedness due and owing under the Agreement.

10. A deficiency in the amount of \$37,508.91 remains due and owing under the Agreement.

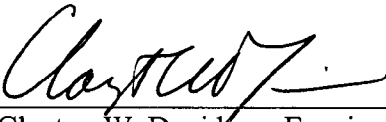
11. Gargasz has breached the written Agreement by failing to pay all sums due and owing thereunder.

WHEREFORE, Deere & Company requests this Court to enter judgment in its favor in the amount of \$37,508.91 along with interest from and following July 15, 2005, costs and reasonable attorney fees against David Gargasz for his breach under the written Agreement.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

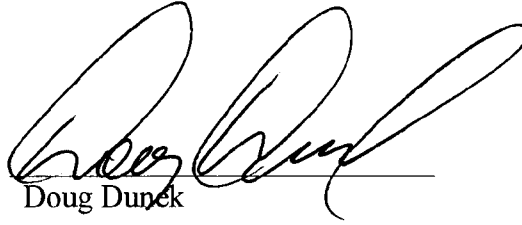
Date: July 25, 2005

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 & Company*

**VERIFICATION**

I, Doug Dunek, Litigation Administrator of Deere & Company, 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  
CREDIT**

03 AI

**FIXED RATE CONTRACT**  
AG/L&GC Business or Commercial Use  
DCCF3015

**LOAN CONTRACT — SECURITY AGREEMENT**

GA D02/116	Application Date: 1/15/2002	Contract No: 168-38-6373	03 AI
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SELLER'S NAME AND ADDRESS			
Landis Bros., Inc. P.O. Box 4573 Lancaster, PA 17604-4573	DEALER NUMBER 03-9596	PHONE NUMBER 717-653-2340	DATE ACCEPTED BY DEERE & COMPANY For Office Use Only

**PHYSICAL DAMAGE INSURANCE REQUIRED: (See Provisions Below)**

The insurance provided hereunder does not include liability insurance coverage for bodily injury or property damage caused to others. If I desire liability insurance coverage, I should obtain such coverage from an agent of my choice.

<b>INSURANCE DISCLOSURES:</b> I may obtain Physical Damage Insurance from anyone I want that is acceptable to you. If I get this insurance through you, I will pay the premium shown at right. No insurance will be provided unless I sign at the right and the premium is shown.	NO. Pymts.	PREMIUM	I want Physical Damage Insurance (Sign in this box)
			X
Credit Life Insurance is not required to obtain credit and will not be provided unless I sign at the right and the premium is shown. The policy applies to the first named Debtor only.	NO. Pymts.	PREMIUM	I want Credit Life Insurance (Sign in this box) Age:
			X

BUYER'S NAME AND ADDRESS			
David Gargas RD#1 Box 244 Woodland, PA 16881	DEBTOR'S SOC. SEC. NUMBER	DEBTOR'S PHONE NO.	TYPE OF BUSINESS
	168-38-6373	814-857-7078	Individual
	DEBTOR RESIDES IN (County / State)	BUYER (DEBTOR) AGREES TO KEEP GOODS IN (County, State)	
	Clearfield, PA	Clearfield, PA	
NAME AND TITLE OF SIGNING OFFICER (If Corporation or Limited Liability Company)			

CO-BUYER'S NAME AND ADDRESS		
	CO-DEBTOR'S SSN	CO-DEBTOR'S PHONE NO.

I hereby apply to Deere & Company (the "Lender") for a loan of the Amount Financed shown below, and on the following terms and conditions. The amount of the UNPAID BALANCE shown below on Line 3 is to be used to finance the BALANCE DUE on the PURCHASE ORDER executed in connection with the purchase from the Seller of the Equipment described below (the "Goods"). I agree that I have received the Goods. You can inspect the Goods at any reasonable time.

**PARTIES:** In this agreement, the words "I", "me", and "my" mean the persons, whether one or more, who sign it as "Borrower(s)" (who is also known as "Debtor(s)").

**THE TERMS OF THIS CONTRACT ARE CONTAINED ON MORE THAN ONE PAGE**

Document Number: 10100729	<b>Original Copy</b>	Equipment Type: A
RTN3016RA91/23/2002		PAGE 1 OF 5

**PROMISSORY NOTE:** If this Loan Contract is accepted by Lender, I promise to pay to Lender or its order the TOTAL as in line 8 below, in MONTHLY INSTALLMENTS and/or INSTALLMENTS OTHER THAN MONTHLY as shown below. If more than one person signs this agreement as "Borrower" we will be jointly and severally liable for all amounts due under this agreement. I represent that the Goods are being purchased for a business, commercial or agricultural purpose.

EQUIPMENT PURCHASED						
QTY.	NEW/ USED	MFR.	MODEL	GOODS (Equipment)	PRODUCT ID NO.	AMOUNT
1	New	JD	6850	S/P Harvester	Z06850X505059	\$249,388.00
1	New	JD	640	Pickup <i>PLTF</i>	CC640AX052652	\$17,661.00
1	New	JD	666	Row Crop <i>Rowc</i>	Z00666R008337	\$32,893.00

TRADE-IN and CASH DOWN PAYMENT					
QTY.	MFR.	MODEL	DESCRIPTION OF TRADE-IN (From Purchase Order)	PRODUCT ID NO.	AMOUNT
1	NH	FX45	Harvester w/row.crop/pick up Allowance: \$187,942.00 Payoff Amount: \$103,872.26 Lien Holder: New Holland Credit Payoff Account: 0860-2586-23-05-427-02 Phone Number: 800-587-1333	4701009	\$84,069.74
<i>JV# 89023</i>				John Deere Credit to make Payoff: Yes	
				TOTAL TRADE-IN:	\$84,069.74
				CASH DOWN PAYMENT:	<del>3250.00</del> \$0.00
				TOTAL TRADE-IN PLUS CASH DOWN:	<del>\$84,069.74</del>

*87319.74*

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**Original Copy**

Equipment Type: A

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**CONTRACT INSTALLMENTS**DATE FINANCE  
CHARGE BEGINS:**February 1, 2002***Unless otherwise provided below payments are due each successive month  
on the same day of the month as the first payment*

NUMBER OF PAYMENTS	AMOUNT OF EACH PAYMENT	FIRST PAYMENT DUE DATE
4	42568.05 <del>\$43,218.06</del>	<b>December 1, 2002</b> And Annual thereafter;
1	<del>\$43,218.06</del> 42568.06	<b>December 1, 2006</b> And Annual thereafter;

The amounts shown below as Finance Charge, Total of Payments and Total Sale Price are estimates based upon the assumption that payments will be made on the scheduled payment due date according to the installment schedule. The actual Finance Charge, Total of Payments, and Total Sale Price may vary depending upon the early or late payment of scheduled installments.

**ITEMIZATION OF AMOUNT FINANCED**

SALES TAX (Paid to Govt. Agencies)		<b>\$0.00</b>
CASH PRICE (Including Tax)	1	\$299,942.00
TOTAL DOWN PAYMENT (Sum of Trade-In & Cash Down Payment)	2	57319.74 <del>\$84,069.74</del>
UNPAID BALANCE OF CASH PRICE (The amount credited to my account with you)	3	242622.26 <del>\$13,872.26</del>
ORIGINATION CHARGE	4A	<b>\$50.00</b>
OFFICIAL FEES (Paid to Public Officials)	4B	<b>\$168.00</b>
INSURANCE (Credit Life and/or Physical Damage Paid to Insurance Companies)	5	<b>\$0.00</b>
AMOUNT FINANCED (Lines 3, 4A, 4B & 5). The amount of credit provided to me.	6	242840.26 <del>\$216,090.26</del>
<b>FINANCE CHARGE</b> (Based on line 6) The dollar amount the credit will cost me.	7	<b>\$0.00</b>
TOTAL OF PAYMENTS (Lines 6 & 7) The amount I will pay if I make all payments as scheduled.	8	242840.26 <del>\$216,090.26</del>
<b>ANNUAL PERCENTAGE RATE</b> (The cost of my credit as a yearly rate).		<b>0.00%</b>
TOTAL SALE PRICE (Lines 1, 4A, 4B, 5 & 7). The total price of my purchase on credit, including my Down Payment of \$84,069.74		<b>\$300,160.00</b>

**SECURITY AGREEMENT:** To secure the obligation evidenced by this contract and any other obligation that I may owe to Lender or to Lender's affiliates, I grant Lender a Security Interest in the Goods described above (which term includes items, if any, listed as "security" or "additional security") and all parts and accessories now or hereafter incorporated in or on such Goods by way of addition, accession or replacement. I also grant you a Security Interest in all proceeds, including insurance proceeds and refund of insurance premiums financed hereunder. I acknowledge that all security granted on any other Contract between myself and Lender or Lender's affiliates shall also secure the obligations described in this Contract.

**PREPAYMENT REFUND:** I may prepay the full outstanding balance due under this agreement at any time before my payments are due and will get a refund of any unearned finance charge.

**ADDITIONAL CONTRACT INFORMATION:** See all of the pages of this agreement for additional information regarding non-payment, default, the right to demand immediate payment, and prepayment refunds.

**LATE PAYMENTS:** In addition to promising to pay the installments set forth above, I promise to pay past due interest accrued from maturity on each installment in default more than 10 days (15 days in North Carolina) at the highest rate permitted by applicable state law. If Seller's place of business is in Mississippi, the installment must be in default more than 15 days and the late charge shall not exceed the greater of 4% of the unpaid amount of the late installment or \$5.00.

**STATE LAW APPLYING:** The construction and validity of this agreement shall be controlled by the law of Iowa, where this agreement is accepted and entered into, and the validity of the security interest shall be controlled by the law of the state where the Goods are to be kept and used.

**PREPAYMENT REFUNDS:** Any refund of unearned finance charges (as described on the front) will be figured by the actuarial method (a common formula for figuring refunds on the early payment of installment contracts).

**NSF FEES:** If payment is made by a check which is dishonored, I agree to pay you a fee of \$20 or such lesser amount specified by applicable law.

**THE TERMS OF THIS CONTRACT ARE CONTAINED ON MORE THAN ONE PAGE**

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**APPLICATION OF PAYMENTS AND PROCEEDS:** Any money that you get from me as well as any insurance proceeds, proceeds from the disposition of the Goods following repossession and returned insurance premiums may be applied, at your choice to what I owe under this Agreement or to any other debt I owe you, in spite of any instructions I may send you. Also, they may be applied to finance charges before the unpaid balance of the amount Financed and to late charges, charges for dishonored checks and past due interest before installments. If any proceeds from the sale of the Goods or insurance are applied to the debt, I remain liable to make each periodic payment described in this contract until it is paid in full. You can accept payments marked "paid in full" or with any other restrictive endorsements, without losing any of your rights under this Agreement.

**DEFAULT:** This contract shall be in default if: (a) I fail to pay any installment when due, (b) I attempt to sell or encumber any interest in the Goods, (c) I institute or have instituted against me proceedings under any bankruptcy or insolvency law, (d) I make an assignment for the benefit of creditors, (e) I fail to pay any taxes levied on the Goods, (f) any attachment, execution, writ or other process is levied against any of my property, (g) I fail at any time to keep the Goods properly insured as described below, (h) I remove the Goods, without prior written notice to Lender, from the location in which I have agreed to keep them, (i) I fail to maintain the Goods in good condition and repair or permit its value to be impaired, (j) I permit the Goods to be used in violation of any law, regulation or policy of insurance, (k) any representation, warranty or statement is made to Lender in connection with this agreement which is false in any material respect when made, (l) any legal entity such as a partnership, limited liability company or corporation that has agreed to pay this agreement ceases to do business, dissolves, liquidates its assets or terminates or fails to maintain its corporate existence, or (m) for any reason Lender deems the debt or security unsafe. In any such event Lender may take possession of any Goods in which Lender has a Security Interest and exercise any other remedies provided by law, and may immediately and without notice declare the entire balance of this contract due and payable. In addition, to the extent permitted by law, Lender may collect all reasonable expenses, including attorney's fees, incurred in realizing on the Security Interest granted hereunder, or otherwise enforcing the terms of this contract. Lender also has the right to take possession of the Goods or render the Goods unusable.

If you take possession of the Goods after I default, it shall be commercially reasonable for Lender to sell the Goods at a public or private sale: (i) at wholesale to a dealer in used goods of like kind; (ii) at retail to a purchaser directly or through a dealer in such used goods; or (iii) to any John Deere dealer or comparable Lender or equipment through any on-line or in-person auction or other sale, such action shall constitute a commercially reasonable sale. I acknowledge that you may, instead of selling the security, lease or rent the security and such action shall be commercially reasonable so long as you apply the proceeds of such lease or rental to the indebtedness either as such payments are received, or based upon a present value of the scheduled lease or rental payments. The enumeration of the methods described in this paragraph are without limitation to the Lender's right to dispose of the Goods by any other manner or method, whether by sale, lease, or otherwise, in a commercially reasonable fashion. You also have the right to take possession of the Goods or to render the Goods unusable. A ten day notice of sale mailed to you at your address as shown on our records shall be considered reasonable notice, unless otherwise specified by law.

**RISK OF LOSS AND OTHER AGREEMENTS:** The Goods are held by me at my risk and expense with no abatement in my obligation on account of loss or damage. I will settle all claims of any kind against SELLER directly with SELLER and I will not use any such claim as a defense, setoff or counterclaim against any effort by Lender to enforce this contract. Waiver or condonation of any breach or default shall not constitute a waiver of any other or subsequent breach or default. To the extent permitted by law, I agree that a financing statement which describes either the security contained in this Contract or a financing statement which references all equipment currently or in the future financed by Lender or its assigns, may be filed in the appropriate governmental office without my signature. I agree that I will notify you whenever I change my state of location, as such term is used in Section 9-307 of the Uniform Commercial Code. FAX AND

**ELECTRONIC SIGNATURE:** Each person who signs this contract agrees that any carbon signature, facsimile signature or electronic signature shall constitute an original signature within the meaning of applicable law, for all purposes. Any provision hereof prohibited by law shall be ineffective and deemed deleted to the extent of such prohibition and shall not invalidate any other provision hereof. Lender may correct patent or clerical errors in this contract, or in any purchase orders or financing statements executed in connection herewith.

**PHYSICAL DAMAGE INSURANCE PROVISIONS:** I agree that (except to the extent this contract is for service work) I will at all times keep the Goods insured against all risks of loss, damage or destruction for their full insurable value, with Lender listed as loss payee. I may choose the person through whom I obtain the insurance, but the insurance must be acceptable to Lender. Such insurance will provide that it may not be cancelled by me without Lender's consent and may not be cancelled by the insurer without at least 10 days written notice to Lender. I agree to provide Lender with evidence of the paid-up insurance policy that I have on the Goods within 15 days of the date of this contract and at least 30 days before the renewal date. It is understood that if I fail to deliver to Lender satisfactory evidence of paid-up insurance, Lender may, but shall not be obligated to, purchase such insurance. I agree to pay the cost thereof either at such time or times as Lender demands, together with interest thereon at the Contract Rate until paid, or to have such cost added as increases in the amounts of the installments at the sole discretion of Lender. If I provide evidence of paid-up insurance after these time periods, I agree to reimburse Lender for the cost of any insurance Lender purchased until the date such evidence is provided by me. In addition, if permitted by law, I agree to pay a reasonable administrative fee to Lender for obtaining and cancelling such insurance.

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Original Copy

Equipment Type: A

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I understand that I may meet this insurance requirement by having you purchase such insurance. Inclusion of an amount for Physical Damage Insurance in Insurance Disclosures box on the front of this contract will be my election to do this, but such insurance will only be purchased if Deere & Company accepts assignment of this agreement. Such insurance will cover the fair market value of the Goods at the time of loss and will remain in effect until my debt to you is paid in full, or your Security Interest in the Goods terminates, or I default under this contract and you cancel the insurance, or any of the Goods are repossessed, or the Retail Installment Sales Floater Policy under which you purchased the insurance is terminated.

If I default under this contract, I give you permission to cancel any insurance on the Goods and, if allowed by law, to apply any premium refunds to my debt to you with any excess returned to me.

Any proceeds payable to me from insurance by reason of loss, damage or destruction of the Goods may be applied to my outstanding debt to you or to replacement of the Goods, at your sole discretion.

I understand and agree that you may consider my debt in default if I fail to keep the Goods properly insured at any time before my debt to you is paid in full. If that happens, you may, but are not obligated to, buy insurance to protect the Goods and add the cost to my debt to you, and I promise to pay such additional cost upon your demand.

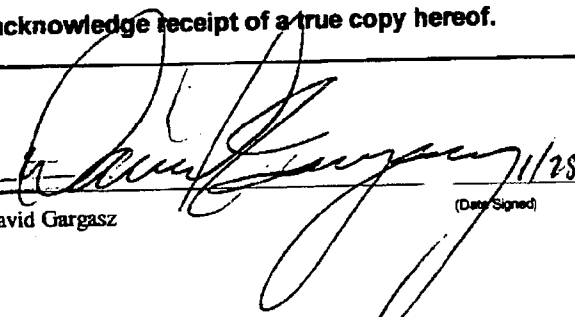
**NOTICE TO BUYER:** 1. Do not sign this contract before you have read it or if it contains blank spaces. 2. You are entitled to an exact and completely filled in copy of this contract when you sign it. Keep it to protect your legal rights. 3. Under law, you may have the following rights, among others: (a) to pay off in advance the full amount due and to obtain a partial refund of the finance charge, (b) to redeem the property if repossessed for a default within the time provided by law.

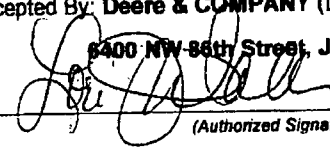
I agree that the provisions on the pages of this form are part of my agreement with you and are also binding on me.

**Liability insurance coverage for bodily injury and property damage caused to others not included.**

**CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.**

I acknowledge receipt of a true copy hereof.

 X <u>David Gargas</u> <u>1/25/02</u> (Date Signed)
X _____ (Date Signed)

DATE AGREEMENT SIGNED: <u>31 Jan 02</u>
Accepted By: <b>Deere &amp; COMPANY</b> (Lender/Secured Party)
<u>6400 NW 86th Street, Johnston, IA 50131-6600</u>
By  (Authorized Signature)

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Equipment Type: A

PAGE 5 OF 5

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100678  
NO: 05-1093-CD  
SERVICE # 1 OF 1  
COMPLAINT

PLAINTIFF: DEERE & COMPANY  
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  
01/4/05  
DEC 02 2005

William A. Shaw  
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	MCNEES	141207	10.00
SHERIFF HAWKINS	MCNEES	141207	22.05

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2005

So Answers,

*Chester A. Hawkins*  
*by Mauley Hamer*  
Chester A. Hawkins  
Sheriff

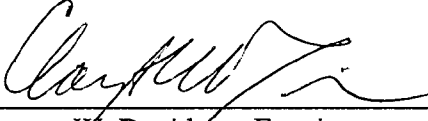
C/D

**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 & Company

Vs.

David Gargas

No. 2005-01093-CD

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

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

DEERE & COMPANY,	:	No. 2005-1093-CD
Plaintiff	:	
vs.	:	Type of Pleading: Defendant's Answer,
	:	New Matter
DAVID GARGASZ,	:	
Defendant	:	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  
William A Shaw  
Prothonotary/Clerk of Courts  
Amy Kesner



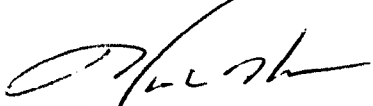
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

DEERE & COMPANY	:
Plaintiff	:
vs.	:
	: No. 05-1093-CD
DAVID GARGASZ,	:
Defendant	:

**NOTICE TO PLEAD**

TO: Deere & Company

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 & COMPANY	:
Plaintiff	:
	:
vs.	: No. 05-1093-CD
	:
DAVID GARGASZ,	:
Defendant	:

**ANSWER**

1. Admitted.

2. Admitted.

3. Admitted.

4. The averments contained in paragraph 4 require no response.

5. Admitted.

6. Gargasz is without sufficient knowledge or information to confirm that the Agreement was assigned by Landis Brothers, Inc., to Deere. Proof thereof is requested. However, Gargasz admits that Deere was granted a security interest in the collateral by the Agreement.

7. Admitted.

8. Admitted.

9. Gargasz is without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 9 of Deere's Complaint. Proof thereof is requested.

10. Gargasz specifically denies that a deficiency in the amount of \$37,508.91 remains due and owing to Deere. To the contrary, Gargasz believes and therefore avers that Deere replevied other equipment in December of 2002 and that Deere has not properly applied the

value of other collateral or the proceeds of disposition of other collateral as required by the Pennsylvania Commercial Code.

11. It is admitted that a breach of the Agreement occurred but it is specifically denied that the sums claimed due are due and owing. By way of further Answer, it is averred that any deficiency is set off by the surplus of value or proceeds in disposition of other collateral.

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

**NEW MATTER**

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

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

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

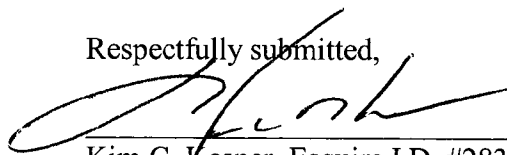
15. Deere's Complaint fails to state a claim or cause of action upon which the relief of attorney's fees can be granted.

16. Deere waived or released Gargasz from any liability for any deficiency in the collateral by failure to provide Gargasz with due and proper notification before disposition of the collateral as required by 13 Pa.C.S.A. Section 9611.

17. Any liability for a deficiency in the collateral is set off in whole or in part by the surplus of value or proceeds in disposition of the following equipment which was also replevied by Deere in December of 2002: 8650 John Deere tractor, 7610 John Deere tractor, 1750 John Deere planter, 450 John Deere drill, 970 John Deere roller harrow, Gehl harvest wagon, 1329 Gehl spreader, 915 B.R. soil remover, and 980 Gehl forage wagon.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kim C. Kesner', is written over a horizontal line.

Date: October 7, 2005

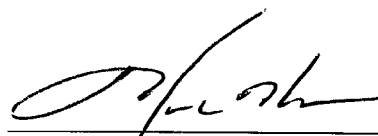
Kim C. Kesner, Esquire I.D. #28307  
Attorney for Defendant  
23 North Second Street  
Clearfield, PA 16830  
(814) 765-1706  
(814) 765-7006

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on the 7<sup>th</sup> 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:

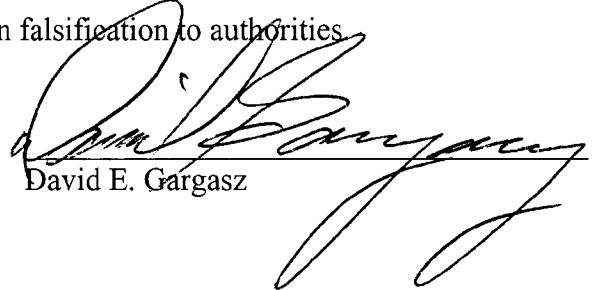
Clayton W. Davidson, Esquire  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 17108-1166

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.

A handwritten signature in black ink, appearing to read 'David E. Gargasz', is written over a horizontal line. The signature is stylized with large, flowing loops.

Date: 10-7-05

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

DEERE & COMPANY,                      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