

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	CHAPTER 11
N.O.C.,	§	
	§	CASE NO. 23-40266-ELM-11
Debtor.	§	

**U.S. PECANS, LTD.'S RESPONSE IN OPPOSITION TO DEBTOR'S OBJECTION
TO PROOF OF CLAIM NO. 10031 FILED BY U.S. PECANS, LTD.**

TO THE HONORABLE EDWARD LEE MORRIS, UNITED STATES BANKRUPTCY JUDGE:

U.S. PECANS, LTD. (hereinafter "USP") submits this response in opposition to the Debtor's Objection to Proof of Claim No. 10031 filed by USP, found at docket no. 238.

1. Paragraph 1 of the Objection is a request for relief and does not require admission or denial.
2. Paragraph 2 of the Objection explains the legal basis upon which the Debtor seeks relief and does not require admission or denial.
3. The jurisdictional and venue allegations of Paragraph 3 are admitted.
4. The allegations of Paragraph 4 are admitted in part and denied in part. In relation to Debtor's allegations that "Debtor and Claimant never executed a security agreement with respect to the Pecans" and the "Debtor is unaware of the Claimant perfecting any security interest in the Pecans", USP would add that the agreements and transactions between the Debtor and USP had aspects uncommon in other commercial contexts. The Debtor operated a pecan storage and processing plant. USP delivered pecans to the Debtor with a variety of agreements in place which confirmed that USP was and continued to be the owner of the pecans delivered to the Debtor's plant until the point in time at which the Debtor paid USP for pecans sold by the Debtor, whether the pecan were sold as processed or unprocessed pecans, all of which has been admitted by Debtor's restructuring officer, Brad Walker; (2) there were no credit sales by USP to the Debtor; (3) USP's right, title, and interest in and to the pecans continued without interruption until USP was paid. Thus, unless the agreements and documents in place are treated as security agreements, the Debtor and USP did not have security agreements in place. However, USP's right, title, and interest in

the pecans was perfected by the agreements and documents in place confirming USP's ownership and by USP's possession via a lease agreement.

5. The allegations of Paragraph 5 are admitted.

6. The allegations of Paragraph 6 are admitted.

7. The allegations of Paragraph 7 are admitted, although the relevance of the allegations to the Debtor's claim objection is denied. Some time after the closing of the sale, USP reached an agreement with the Buyer allowing USP additional time, until September 4, 2023, to remove USP's pecans from the premises.

8. The allegations of the first sentence of Paragraph 8 are admitted. The allegations of the second sentence of Paragraph 8 are denied. The allegations of the third sentence of Paragraph 8 are admitted. USP did reach an agreement with the Buyer, albeit recently, allowing USP until September 4 to retrieve and remove its pecans.

9. Paragraph 9 recites the statutes, rules, and cases applicable to claim objections generally and does not require admission or denial.

10. Paragraph 10 contains a mixture of legal argument and factual allegations. USP contests the Debtor's legal arguments. In relation to the factual allegations: (a) USP denies that the proof of claim does not include supporting documents. The proof of claim includes USP's inventory records of pecans on site, totaling 1,447,976 million pounds, as well as USP's statement of open invoices, not released, totaling \$1,889,616.85, reflecting pecans which appear to have been sold by the Debtor without paying USP. The agreements in place in relation to the pecans were not included, partly because the Debtor's restructuring officer, Brad Walker, admitted under oath that the pecans are USP's pecans and partly because the totality of the records is voluminous. Attaching and filing the totality of the records supporting the proof of claim seemed useful only for making the filing process bitterly time-consuming and for cluttering the claims docket. The Debtor has not asked USP to produce copies of the totality of the supporting records, presumably because the records are in the Debtor's possession. (b) USP is uncertain how the claim will be treated by the Court, whether as secured or unsecured or partially secured and partially unsecured. (c) USP

endeavored to explain in the claim that, in view of the rather unique arrangements and agreements employed in the pecan business and the very limited options available in Official Form 410 for classification and explanation of the claim, determining how to correctly complete Form 410 in this context was a bit of a mystery.

11. The allegations of Paragraph 11 are denied. Not only are the allegations argumentative, but they are incorrect. The reason the claim is not resolved is that the Debtor made virtually no effort to resolve the claim. The Debtor's inventories of the pecans do not come close to matching USP's inventories, and the Debtor has declined to explain the reasons for the difference. USP's informal request for the Debtor's records relevant to the claim has been effectively ignored. Furthermore, the Debtor has not denied that large sums are owed to USP. The Debtor's restructuring officer, Brad Walker, admitted that, if the agreements in place for USP's pecans had been observed, there would be no unpaid balances owing to USP. But there apparently are unpaid balances, and Mr. Walker did not explain the reason for the unpaid balances.

12. To the extent that the allegations of Paragraph 12 are statements of the law or are simply argumentative, admission or denial is not required. Otherwise, the prepetition payments to USP referenced by the Debtors would reduce or affect USP's claim only if the payments are shown to be avoidable transfers. The Debtor's allegations are insufficient to even raise an issue in that regard. Furthermore, the Debtor's suggestion flies in the face of the testimony of the Debtor's restructuring officer, Brad Walker, who testified (if memory serves) that from the time he began working with the Debtor back in the Fall of 2021, the Debtor had complied with the agreements with USP and had paid USP according to those agreements, which would mean that the payments referenced by the Debtor in Paragraph 12 of the Objection were simply payments made by the Debtor in contemporaneous exchanges of money for pecans. The payments would not constitute avoidable transfers. The Debtor's innuendos in Paragraph 12 seem somewhat disingenuous in light of Mr. Walker's testimony and in light of the applicable agreements and the transactions in question.

13. The allegations of Paragraph 13 are argumentative and do not require admission or denial. Nevertheless, USP denies that the Debtor has not received credit for sums paid to USP under Critical

Vendor Authorization. In other words, such sums were properly credited. In relation to claims of so-called Related Entities, USP denies that USP or any Related Entities are seeking double recoveries.

14. Additionally, it appears that the Debtor is taking the position that returning the pecans admittedly owned by USP will resolve USP's claim. The Debtor's position is at odds with the facts. The Debtor has advised USP and to U.S. Pecan Trading Co., Ltd. that the Debtor has approximately 1.1 million pounds of pecans to return to USP and to U.S. Pecan Trading Co., Ltd., which is substantially short of the pecans that the Debtor should have available to return to USP and to U.S. Pecan Trading Co., Ltd. Referencing only inshell pecans, the Debtor has failed to return to USP or account for 1,189,061 pounds of pecans worth approximately \$2,058,202.06. The Debtor has failed to return to U.S. Pecan Trading Co., L.P. or account for 1,037,940 pounds of pecans worth approximately \$1,138,253.49. Those figures do not include other categories of pecans that may be unaccounted, such as whole meats, halves, or pieces. USP and to U.S. Pecan Trading Co., Ltd. have no idea why the Debtor's inventories are short. One of the reasons for the informal request for records by USP and U.S. Pecan Trading Co., Ltd. was to try to determine where the missing pecans are or have gone, and to reconcile the conflicting inventories.

15. In addition, the Debtor's objection appears to ignore the fact that USP and U.S. Pecan Trading Co., Ltd. are owed substantial amounts which may prove to be unsecured once the parties determine how many pecans are missing and the inventory discrepancies are reconciled.

16. USP would respectfully request that the Court consolidate the claim objections pertaining to USP and U.S. Pecan Trading Co., Ltd. and treat the consolidated claim objections as an adversary proceeding with a scheduling order for discovery and trial.

For these reasons, USP respectfully prays that the Objection will be denied or that the Court will determine the proper characterization of the claim and allow the claim in accordance with such characterization.

Respectfully submitted,

SCOTTHULSE^{PC}
One San Jacinto Plaza
201 E. Main, 11th Floor
P.O. Box 99123
El Paso, Texas 79999-9123
(915) 533-2493
(915) 546-8333 Telecopier

By: / s/ Robert R. Feuille
ROBERT R. FEUILLE
Texas Bar No. 06949100
bfeu@scotthulse.com
Counsel for U.S. Pecans, Ltd.

CERTIFICATE OF SERVICE

The undersigned certifies that on July 28, 2023, a true and correct copy of the foregoing document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District.

/ s/ Robert R. Feuille
ROBERT R. FEUILLE