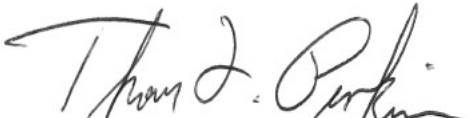


SIGNED THIS: February 22, 2007



THOMAS L. PERKINS
UNITED STATES CHIEF BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS**

IN RE:)	
)	
INTEGRATED AGRI, INC.,)	No. 01-84536
)	
Debtor.)	

)	
RICHARD E. BARBER, Chapter 7 Trustee)	
for Integrated Agri, Inc.,)	
)	
Plaintiff,)	
vs.)	Adv. No. 03-8231
)	
IMI EQUIP., LLC,)	
)	
Defendant.)	

OPINION

Richard E. Barber, as Chapter 7 Trustee (TRUSTEE) for the estate of the Debtor, Integrated Agri, Inc. (DEBTOR), initiated this adversary proceeding against the Defendant, IMI Equip., L.L.C. (IMI), to recover preferential transfers under Section 547 of the Bankruptcy Code. This matter is presently before the Court on the TRUSTEE’S Motion to Amend the First Amended Complaint and IMI’s Objection thereto.

FACTUAL AND PROCEDURAL BACKGROUND

The DEBTOR was the parent company of four corporations operating as farm equipment dealers in Illinois, Iowa and Missouri.¹ The stock of the DEBTOR was owned by Michael Maulsby, Kent Nixon and Steven Westbay. The same three individuals owned IMI. In February, 2001, the DEBTOR and IMI executed a document entitled “Promissory Note - Demand Joint and Several Liability” under which IMI loaned the DEBTOR \$323,604 with interest to be charged at the “available rate tied to N.Y. Prime.” A handwritten notation on the promissory note indicates that the purpose of the loan was to give “IAI the ability to pay for new Kinze Planters.”

On October 23, 2001, the DEBTOR filed a petition seeking relief under Chapter 11 of the Bankruptcy Code. On the DEBTOR’S motion, the case was converted to Chapter 7 on November 16, 2001. The DEBTOR’S Statement of Financial Affairs, filed December 11, 2001, fails to disclose any prepetition transfers.² On October 23, 2003, the last day of the two-year statute of limitations under Section 546(a), the TRUSTEE filed a two-count Complaint to avoid and recover preferential transfers under Section 547(b) of the Bankruptcy Code.³ In Count I, the TRUSTEE sought to recover as a preferential transfer

¹The four corporations are Westbay Equipment Co., Acquisition No. 1, Inc., Nixon Farm Equipment, Inc. and Power Pro Incorporated.

²In paragraph 3a, requiring disclosure of all payments made within 90 days before bankruptcy, the DEBTOR listed no payments, stating “creditors paid through subsidiaries.” In paragraph 3b, requiring disclosure of all payments made within 1 year before bankruptcy to or for the benefit of insiders, the DEBTOR checked the box “None.” These incorrect disclosures were never amended.

³Section 546 limits the time for filing avoidance actions brought under Section 547(b) to the earlier of: (1) two years after the entry of the order for relief or one year after the appointment or election of the first trustee, whichever is later; or (2) the date upon which the case is closed or dismissed. *See* 11 U.S.C. § 546(a)(1) and (2). The date of case commencement, October 23, 2001, constitutes the date of the entry of the order for relief. *See* 11 U.S.C. § 301. Accordingly, the deadline for the filing of avoidance actions was October 23, 2003, which is the date the TRUSTEE filed his original Complaint.

a single payment in the amount of \$86,900.96 made to IMI within ninety days immediately preceding the DEBTOR'S filing of its petition for relief. The TRUSTEE did not allege any further facts under this Count regarding the payment, but merely paraphrased the elements of a preferential transfer made to a non-insider under Section 547(b). Under Count II, the TRUSTEE sought to recover a series of five payments totaling \$335,990.96 on account of an unsecured loan made by IMI, an insider, on February 1, 2001 to the DEBTOR as preferential transfers.⁴ Specifically, the TRUSTEE alleged the payments were made on the dates and in the amounts as follows:

March 12, 2001	\$ 40,000.00
April 26, 2001	\$ 50,000.00
May 9, 2001	\$100,000.00
May 21, 2001	\$ 59,000.00
September 24, 2001	\$ 86,900.96

The remainder of the allegations under Count II paraphrased the statutory elements of a preferential transfer made to an insider under Section 547(b).

IMI filed its Answer admitting insider status and receipt of the payments and asserting the following affirmative defenses: (1) the payments were made in the ordinary course of business; (2) at the time the payments were made, the DEBTOR was solvent;⁵ and (3) the DEBTOR borrowed money from IMI to purchase Kinze planters and as the planters were sold, the DEBTOR repaid IMI in accordance with the terms of the agreement between the parties. During a pretrial status hearing on September 20, 2005, the TRUSTEE orally

⁴The TRUSTEE'S Complaint asserts that the unsecured loan was made by IMI on February 15, 2001. However, the copy of the promissory note attached to the TRUSTEE'S First Amended Complaint shows that it was signed on February 1, 2001.

⁵In the pretrial statement filed on April 26, 2004, IMI withdrew its second affirmative defense and admitted the DEBTOR was insolvent at the time the payments were made.

sought leave of the Court to amend his Complaint, alleging that he had discovered an additional wire transfer of approximately \$100,000 made by the DEBTOR to IMI within the preference period. IMI did not object to the motion to amend, and the Court orally granted the TRUSTEE leave to file an Amended Complaint. On September 27, 2005, the TRUSTEE filed his First Amended Complaint, adding to both Counts I and II an allegation that the DEBTOR made an additional payment in the amount of \$99,990 to IMI on October 11, 2001. The TRUSTEE also added an allegation that the two payments alleged in Count I were made on behalf of the February 1, 2001 unsecured loan.

On October 3, 2005, IMI answered the First Amended Complaint, again admitting the payments were received as alleged. In addition to reasserting its previously asserted affirmative defenses, IMI asserted that the TRUSTEE'S claim for the \$99,990 payment is barred by (1) the statute of limitations under Section 546 because it was brought more than two years after the order for relief was entered and more than one year after the TRUSTEE was appointed; and (2) laches because disclosure of the \$99,990 transfer was made to the TRUSTEE on May 13, 2004, but the TRUSTEE did not bring the claim until September 27, 2005, almost seventeen months after he first learned of the payment.

On April 27, 2006, IMI moved to amend its Answer to the First Amended Complaint to correct an erroneous admission. Specifically, IMI stated that in its Answer it had admitted receiving both the \$86,900 and \$99,990 payments on account of the unsecured loan as alleged in Count I of the TRUSTEE'S First Amended Complaint. IMI asserted that this admission was erroneous because the \$99,990 payment was not made on the unsecured note; instead, it was actually related to a completely different transaction involving the

DEBTOR, IMI and the purchase of a used 9380 Case IH tractor by another company, CKMS, LLC.⁶ The TRUSTEE did not object to IMI's motion to amend its answer, and the motion was granted by the Court on May 17, 2006. IMI subsequently filed its Amended Answer denying the allegation in Count I that the \$99,990 payment was made on account of the unsecured loan.⁷

On July 31, 2006, the TRUSTEE moved to amend his First Amended Complaint, seeking to add a new Count III alleging an alternative cause of action describing the \$99,990 payment as a fraudulent conveyance in which the DEBTOR paid the debt of another "where the DEBTOR itself was not obligated on the debt." The TRUSTEE asserts that the fraudulent conveyance claim he wishes to bring is not time barred because it arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the First Amended Complaint and therefore relates back to the First Amended Complaint.

IMI objected to the proposed amendment asserting that: (1) the \$99,990 transfer involved the purchase of a tractor and is not related to the unsecured loan, which was the subject of the TRUSTEE'S original Complaint, and (2) the proposed amendment seeks to add a new legal theory of recovery not previously alleged in the original complaint and such new legal theory is now time-barred under Section 546 of the Bankruptcy Code. The

⁶According to IMI's motion to amend, on February 16, 2001, CKMS wrote a check for \$103,275 to John Deere to purchase a used 9380 Case IH tractor. On February 20, 2001, IMI wrote a check for the same amount to CKMS to cover the check to John Deere. Around March 12, 2001, CKMS sold the 9380 Case IH tractor and "a trade was taken." CKMS transferred the tractor to DEBTOR, and the tractor became part of DEBTOR'S inventory. Later, the tractor that was traded in was sold and "after the deal washed out," the remaining proceeds of \$100,000 were paid to IMI.

⁷IMI did not make a corresponding correction to its admission of paragraph 5 under Count II of the TRUSTEE'S First Amended Complaint, which alleged the \$99,990 payment made on October 11, 2001, was the sixth payment on the same unsecured loan.

Court held a brief hearing on the motion to amend and objection and took the matter under advisement.

ANALYSIS

Federal Rule of Bankruptcy Procedure 7015 expressly makes Federal Rule of Civil Procedure 15 applicable to adversary proceedings. Fed. R. Bankr. P. 7015. Rule 15(a) provides that, after a responsive pleading is served, “a party may amend the party’s pleading only by leave of court or written consent of the adverse party; and leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a); *see also Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962) (stating that “[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits” and the court should freely grant the plaintiff leave to amend); *Staren v. American Nat. Bank & Trust Co. of Chicago*, 529 F.2d 1257, 1263 (7th Cir. 1976) (stating that in exercising its discretion, the court should liberally construe the Federal Rules of Civil Procedure “to effectuate the general purpose of seeing that cases are tried on the merits and to dispense with technical procedural problems”). Notwithstanding this liberal amendment policy, a court may properly deny such leave under certain circumstances, such as “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.” *Id.*

In this case, because it is undisputed that the two-year statute of limitations for fraudulent conveyance claims under Section 546 expired on October 23, 2003, long before

the TRUSTEE filed his motion to amend his First Amended Complaint, the Court must determine whether the TRUSTEE'S proposed amendment relates back to the allegations in his previously filed complaints under Rule 15(c).⁸ If the fraudulent conveyance claim to be set forth in the proposed amendment does not relate back, allowing the TRUSTEE to amend his Complaint would be a futile gesture because the claim would be subject to dismissal as barred by the statute of limitations provided in Section 546. *In re Slaughter Co. and Associates, Inc.*, 242 B.R. 97, 101 (Bankr.N.D.Ga. 1999); *see also In re Magno*, 216 B.R. 34, 38 (9th Cir.BAP 1997).

Rule 15(c)(2), applicable here, permits an amended complaint to relate back to the date of the original complaint if:

[T]he claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading.

Fed. R. Civ. P. 15(c)(2). The rationale of the "relation-back" doctrine is that a party who has been notified of litigation concerning a particular occurrence has been given all the notice that statutes of limitations were intended to provide. *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 150 n. 3, 104 S.Ct. 1723, 80 L.Ed.2d 196 (1984). The relation back doctrine may ameliorate the effect of a harsh limitations period if it can be done without prejudice or surprise to the opposing party. *See In re Gaslight Club, Inc.*, 167 B.R. 507, 517 (Bankr.N.D.Ill. 1994).

⁸The Court notes that the parties disagree on whether the proposed amendment must relate back to the allegations contained in the original Complaint or the First Amended Complaint. In his motion to amend, the TRUSTEE asserts that the amendment relates back to his First Amended Complaint, in which he added the \$99,990 payment to both counts, alleging it was a preferential transfer related to the unsecured loan under Section 547(b). In its objection, IMI assumes that the proposed amendment must relate back to the allegations in the original Complaint.

An analysis under Rule 15(c)(2) is extremely fact sensitive. The most important factor in determining whether to allow an amended complaint to relate back to the date of the original filing is whether the original complaint provided the defendant with sufficient notice of what must be defended against in the amended pleading. *In re Gerardo Leasing, Inc.*, 173 B.R. 379, 388 (Bankr.N.D.Ill. 1994) (citing *In re Barnes*, 96 B.R 833, 836 (Bankr.N.D. Ill. 1989)). Thus, the relation back analysis focuses on the notice given by the general fact situation alleged in the original pleading. The emphasis is not on the legal theory of the action, but whether the specified conduct of the defendant upon which the plaintiff is relying to enforce his amended claim, is identifiable with the original claim. *Bularz v. Prudential Ins. Co. of America*, 93 F.3d 372, 379 (7th Cir. 1996).

Most courts addressing the issue of relation back in the context of preferential transfer and fraudulent conveyance theories have allowed a plaintiff to amend its original complaint alleging a theory of preferential transfer to add or change the theory to fraudulent conveyance under Section 548 if the fraudulent conveyance theory stemmed from the same basic transaction or core of operative facts. *See, e.g., Mann v. GTCR Golder Rauner, L.L.C.*, 351 B.R. 714, 720-21 (D.Ariz. 2006); *In re E-Z Serve Convenience Stores, Inc.*, 2005 WL 4882753, slip op. at *5 (Bankr.M.D.N.C. Dec. 12, 2005); *Frank Santora Equipment Corp.*, 202 B.R. 543, 546 (Bankr.E.D.N.Y. 1996); *but see In re Gantos, Inc.*, 283 B.R. 649, 651 (Bankr.D.Conn. 2002) (finding the original complaint alleging a preferential transfer did not put the defendant on notice that the same transfer was for “less than reasonably equivalent value, an essential element of a fraudulent conveyance under Section 548, and therefore amended complaint alleging a fraudulent conveyance theory did not relate back).

On the other hand, if an amendment sets forth a new claim based on a set of facts materially different than the original claim, the amendment does not relate back. *Gerardo Leasing*, 173 B.R. at 389 (citing *In re Kruszynski*, 150 B.R. 209, 212 (Bankr.N.D.Ill. 1993)). A party may not use the relation back doctrine solely to “bootstrap” time-barred claims onto viable actions where the claims are not based on the same factual allegations, even to maximize recovery for the estate. *Slaughter*, 242 B.R. at 102-03; *Gaslight Club*, 167 B.R. at 517-18 (citing *Matter of Stavriotis*, 977 F.2d 1202, 1206 (7th Cir. 1992)).

In the present proceeding, the TRUSTEE seeks leave to add a new Count III alleging the alternative theory that the \$99,990 payment was a fraudulent conveyance under Section 548 of the Bankruptcy Code because the DEBTOR paid the debt of another. In his motion to amend, the TRUSTEE states that the amendment is necessary “in light of the new stance taken by [IMI],” and in his response to IMI’s objection, the TRUSTEE asserts that the “fraudulent conveyance action evolved only because of the amended answer of IMI to the First Amended Complaint.” Thus, the TRUSTEE’S proposed fraudulent conveyance claim is based on the facts of the tractor transaction as alleged by IMI in its amended answer.

As noted above, the fact that the TRUSTEE is attempting to assert a new legal theory is not, by itself, fatal to his motion to amend. Relation back may be permitted under Rule 15(c)(2) where an amended complaint asserts a new claim on the basis of the same core of facts, but involves a different substantive legal theory than that advanced in the original pleading. *Bularz*, 93 F.3d at 379. To the extent that the initial allegation of the \$99,990 payment is considered to be timely asserted, adding an alternative legal theory of avoidance is permissible. The more difficult question, however, is whether that payment’s

appearance in the First Amended Complaint will relate back to the initial Complaint. That is a question largely of whether the \$99,990 payment can be said to arise out of the same course of conduct as the payments made on the February 1, 2001 note.

The TRUSTEE argues that the \$99,990 payment is related to the transactions set forth in his earlier complaints because (1) all three owners of the DEBTOR who signed the February 1, 2001 promissory note were also owners of IMI and CKMS; (2) over \$400,000 was loaned by IMI to the DEBTOR and CKMS in February of 2001 and all these funds were fully repaid, with interest, by October 31, 2001; (3) all of the money loaned by IMI to the DEBTOR and CKMS was accounted for on the same ledger by IMI; and (4) all payments made on the loans by IMI to the DEBTOR and CKMS were made by the DEBTOR.

Several bankruptcy courts have held that each alleged preferential transfer in an avoidance action is a separate and distinct transaction between the debtor and the creditor unless the plaintiff alleges a unifying scheme or course of conduct. *See, e.g., In re MBC Greenhouse, Co.*, 307 B.R. 787, 793-94 (Bankr.D.Del. 2004); *Slaughter*, 242 B.R. at 103; *In re Austin Driveway Services, Inc.*, 179 B.R. 390, 399 (Bankr.D.Conn. 1995). The course of conduct to which multiple transfers are related should be broadly construed so as to effect the liberal amendment policy that underlies Rule 15(c)(2). *See In re Marlar*, 120 B.R. 51, 54-55 (Bankr.N.D.Miss. 1989). In determining whether a newly alleged transfer is sufficiently related to a previously alleged course of conduct to warrant relation back, all reasonable factual inferences must be drawn in favor of the plaintiff. *Gerardo Leasing*, 173 B.R. at 390. If it appears that a state of facts may be proved at trial to show the transfers sought to be added arose from the same course of conduct as the previously alleged transfers, the amended complaint should be allowed to proceed. *Id.*

From the allegations of fact set forth in the pleadings, as well as the documents and deposition transcripts filed by the parties, it appears that an unresolved question of fact exists as to how, if at all, the \$99,990 transfer made on October 11, 2001, relates to the other challenged transfers. It appears that the other five transfers were payments made by the DEBTOR to IMI on a loan or line of credit extended on or about February 15, 2001. In the First Amended Complaint, the TRUSTEE alleged that the \$99,990 transfer was also a payment on the same loan. If true, a sufficient relationship between the transfers would certainly exist to justify a relation back finding.

After first admitting the relationship in its Answer to First Amended Complaint, IMI retracted its admission and now denies that the \$99,990 was made as a payment on the February 15, 2001 loan. Despite IMI's reversal of position, the facts in the record permit the possibility that the TRUSTEE is correct about the \$99,990 being the last payment made in a series of loan payments. That possibility is enough, by itself, to warrant permitting the TRUSTEE to amend.

The facts in the record and the inferences drawn from them give rise to a second plausible scenario. It appears that the DEBTOR and IMI, and possibly CKMS, may have been engaged in a course of conduct whereby IMI financed the DEBTOR'S, and CKMS's, acquisition of certain inventory that CASE refused to finance or the acquisition of which was not disclosed to CASE. At this point, the record is not clear how many pieces of equipment were financed for the DEBTOR by IMI, but the facts indicate that at least several pieces were financed. This permits of the possibility that the course of conduct between

the DEBTOR and IMI should be defined to include all inventory financed by IMI, including the Kinze planters and the 9380 Case IH tractor.⁹ The evidence at trial will determine how broadly the course of conduct between the DEBTOR and IMI should be defined.

It is also difficult for IMI to claim surprise or prejudice if the amendment is allowed. The individuals who owned and operated IMI also owned and operated the DEBTOR. In effect, they were on both sides of each of the transactions at issue. They had full knowledge of each transaction as it occurred.

It also should not be overlooked that the DEBTOR, acting through those same individuals, misrepresented the true facts by failing to disclose its prepetition payments on its Statement of Financial Affairs. Had the transfers been disclosed as required, doubtless the TRUSTEE would have sought to avoid all of them in his original Complaint. Instead he was hamstrung by the omission and, likely, by the fact that the \$99,990 payment was made by a wire transfer rather than by check.

The TRUSTEE points out that IMI has only recently, in an effort to reduce its exposure by \$100,000, asserted that the payment is something other than a payment on the February 1, 2001 unsecured loan and “may have misrepresented the nature of the subject payment for over two years.” Although the TRUSTEE does not come out and name it as such, the TRUSTEE is raising an argument that the statute of limitations should be tolled on equitable grounds based on the conduct of IMI and the DEBTOR. Under the doctrine of equitable tolling, a statute of limitations may be tolled by the inequitable conduct of one

⁹IMI’s amended answer references the involvement of CKMS, LLC in the transaction involving the 9380 Case IH tractor, but the substance of the deal was that IMI provided the cash, the DEBTOR obtained title to a tractor, and IMI’s loan was paid by the DEBTOR when the tractor was sold.

or more parties. *In re Papa's Market Cafe, Inc.*, 162 B.R. 519, 524 (Bankr.N.D. Ill. 1993). This equitable tolling provision must be read into every federal statute. *Id.* (citing *Holmberg v. Armbrrecht*, 327 U.S. 392, 397, 66 S.Ct. 582, 585, 90 L.Ed. 743 (1946)). Accordingly, the equitable tolling doctrine applies to § 546(a). See *Gerardo Leasing*, 173 B.R. at 392 (citing *In re United Ins. Management, Inc.*, 14 F.3d 1380, 1384 (9th Cir. 1994)).

The Seventh Circuit has held that the doctrine tolls the running of the statute of limitations in two circumstances. *Morgan v. Koch*, 419 F.2d 993 (7th Cir. 1969). First, the limitations period may be tolled where fraud is undiscovered although the defendant does nothing to conceal it. *Suslick v. Rothchild Securities Corp.*, 741 F.2d 1000, 1004 (7th Cir. 1984). For example, if a debtor fails to schedule an asset or a prepetition transfer, the statute should not begin to run until the trustee obtains knowledge or through due diligence should have obtained knowledge of the asset or transfer. *In re Lyons*, 130 B.R. 272, 280 (Bankr.N.D.Ill. 1991). The trustee has the burden of proving that he exercised reasonable care and diligence in seeking to learn the facts that would have disclosed the unscheduled asset or transfer. *Id.*

Second, the limitations period may be tolled where fraud is undisclosed due to the defendant's affirmative acts to conceal it. *Tomera v. Galt*, 511 F.2d 504 (7th Cir. 1975). In this instance, the plaintiff must come forth with evidence that the defendant's conduct or representations prevented the claim from being timely filed. *Papa's Market Cafe*, 162 B.R. at 524-25; *Lyons*, 130 B.R. at 280. Fraudulent concealment must consist of affirmative acts or representations which are calculated to, and in fact do, prevent the discovery of the cause of action. *Lyons*, 130 B.R. at 280. Mere silence of the defendant and failure of the

plaintiff to learn of the right of action, alone, are not sufficient. *Id.* Where active concealment occurs, the trustee is relieved of his obligation to use due diligence to discover the information. *Id.* When active concealment exists, the statute is tolled until there is actual discovery of the fraud. *Tomera*, 511 F.2d at 510.

A sufficient basis in the record exists to bring into play the doctrine of equitable tolling. The initial failure to disclose the transfers coupled with IMI's recanting and recharacterization of the \$99,990 transfer raises suspicions about whether fraudulent concealment occurred. In addition, because the DEBTOR and IMI were owned by the same individuals, the DEBTOR'S nondisclosure alone may permit equitable tolling if the TRUSTEE exercised reasonable diligence.

Finally, IMI's broad request to dismiss with prejudice "the claims relating to the \$99,990 transfer" must be denied. The TRUSTEE specifically states that by moving to add the fraudulent conveyance claim, he is not abandoning his theory that the \$99,990 payment was a preferential transfer. IMI's amended answer denying the preferential nature of the payment and raising several affirmative defenses thereto, preserves the statute of limitations defense. The parties may pursue resolution of these claims by way of trial, summary judgment or settlement.

Because the TRUSTEE has shown that a factual nexus may exist between the allegations of his previous complaints and his proposed amendment, the Court finds that the proposed amendment may, if such nexus is proved, relate back under Rule 15(c). Alternatively, relation back may be unnecessary if the TRUSTEE proves an adequate

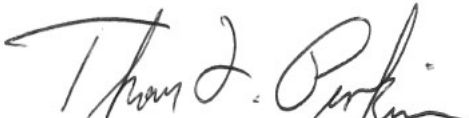
factual basis for application of the doctrine of equitable tolling. Accordingly, the Court grants the TRUSTEE'S Motion to Amend First Amended Complaint without prejudice to IMI's renewal of the issue at trial, and without prejudice to proof of IMI's limitations defense or the TRUSTEE'S equitable tolling argument.

This Opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate Order will be entered.

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IT IS SO ORDERED.

SIGNED THIS: February 22, 2007



THOMAS L. PERKINS
UNITED STATES CHIEF BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS**

IN RE:)	
)	
INTEGRATED AGRI, INC.,)	No. 01-84536
)	
Debtor.)	
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RICHARD E. BARBER, Chapter 7 Trustee)	
for Integrated Agri, Inc.,)	
)	
Plaintiff,)	
vs.)	Adv. No. 03-8231
)	
IMI EQUIP., LLC,)	
)	
Defendant.)	

ORDER

For the reasons stated in an Opinion entered this day, IT IS HEREBY ORDERED that the Motion to Amend First Amended Complaint filed by the PLAINTIFF, RICHARD E. BARBER, on July 31, 2006, is GRANTED. The PLAINTIFF shall file Count III to the First Amended Complaint within 14 days and the DEFENDANT shall answer within 14 days thereafter.