

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS LOGAN; WESTERN EMPIRES CORPORATION, an Oregon corporation; LOGAN FARMS, INC., an Oregon corporation; LOGAN FARMS II, LLC, an Oregon limited liability company; and LOGAN INTERNATIONAL II, LLC, an Oregon limited liability company,

03-CV-435-BR

OPINION AND ORDER

Plaintiffs,

v.

FRANK TIEGS; WESTERN MORTGAGE & REALTY COMPANY, a Washington corporation; and PASCO FARMING, INC., a Washington corporation,

Defendants.

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1 - OPINION AND ORDER

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BROWN, Judge.

This matter comes before the Court on Defendant Western Mortgage, Inc.'s Motion for Release of Funds from Escrow (#349) in the amount of \$1,450,000 and interest earned thereon from October 1, 2008. For the reasons that follow, the Court **GRANTS** Western Mortgage's Motion.

BACKGROUND

On March 16, 2009, following a four-day trial in Pendleton, Oregon, a jury returned a Verdict in favor of Western Mortgage against Plaintiff Logan International II (LIL) as to LIL's Mitsui

Lease claim and an advisory Verdict in favor of Plaintiff Dennis Logan against Western Mortgage as to Dennis Logan's L3 Farm Deed claim. On July 2, 2009, the Court adopted the jury's advisory Verdict on the L3 Farm Deed claim and entered a Final Verdict in favor of Dennis Logan against Western Mortgage as to that claim. As a result of the Court's Verdict, a final judgment shall be entered in due course in favor of Western Mortgage against Plaintiff Dennis Logan as to the Mitsui Lease claim and in favor of Dennis Logan as to the L3 Farm Deed claim.

The convoluted history of this case that led to trial of the Mitsui Lease claim and the L3 Farm Deed claim is set forth in the Court's Opinion and Order (#298) issued on October 2, 2008, and the Court's Final Verdict on the L3 Farm Deed (#355) entered on July 2, 2009. For purposes of this Opinion and Order, however, the Court notes earlier proceedings in this Court and in the Ninth Circuit resulted in this Court entering an Order on October 2, 2008, that, *inter alia*, required Western Mortgage to refund \$1,450,000 to LIL pending the outcome of the trial in Pendleton as to the Mitsui Lease claim. That sum constituted the proceeds from Western Mortgage's sale of equipment under the Mitsui Lease that occurred after it had obtained a Judgment in its favor in this Court as to that claim and before the Ninth Circuit reversed that Judgment. After the Ninth Circuit remanded the issue of the Mitsui Lease to this Court for further

proceedings and before the trial in Pendleton commenced, the parties agreed to place the \$1,450,000 into an escrow account pending the outcome of the trial.

DISCUSSION

Western Mortgage, in light of the jury's Verdict in favor of Western Mortgage on the Mitsui Lease claim, now moves for the immediate release of the \$1,450,000 currently held in escrow. LIL opposes the Motion and asserts those funds should remain in escrow pending entry of a final judgment that includes both the Jury's Verdict on the Mitsui Lease claim and the Court's Verdict on the L3 Farm Deed claim.

LIL argues the funds should not be released yet because LIL has a potential right to offset the amount it now owes to Western Mortgage on the Mitsui Lease claim based on the Court's Verdict in favor of Dennis Logan against Western Mortgage on the L3 Farm Deed claim. The Court disagrees.

LIL could have a potential right of offset if the parties to the L3 Farm Deed claim and the parties to the Mitsui Lease claim were deemed to be the same under the law. Western Mortgage, however, is the only party common to both claims. The Court, therefore, concludes LIL does not have a right of offset as to any judgment entered in favor of Western Mortgage against Dennis Logan.

In addition, as a practical matter and in light of the amount owed by LIL to Western Mortgage as a result of the jury Verdict on the Mitsui Lease claim and the amount Dennis Logan will be required to pay to redeem his ownership interest in the L3 Farm as a result of the Court's Verdict on the L3 Farm Deed claim, there will not be any debt owed by Western Mortgage to either LIL or Dennis Logan that could be offset by the amount now held in escrow.

For these reasons, the Court concludes there is not a good reason to delay the release of the sum of \$1,450,000 plus accrued interest now being held in escrow in respect to the Mitsui Lease claim.

CONCLUSION

For these reasons, the Court **GRANTS** Defendant Western Mortgage, Inc.'s Motion for Release of Funds from Escrow (#349) in the amount of \$1,450,000 plus interest earned thereon from October 1, 2008.

IT IS SO ORDERED.

DATED this 8th day of July, 2009.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge