

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: EXPRESS GRAIN TERMINALS, LLC

CHAPTER 11

BANKRUPTCY CASE NO: 21-11832-SDM

FARM GROUP I'S OBJECTIONS TO MACQUARIE COMMODITIES
(USA) INC.S' OFFICIAL FORM FOR ASSERTION OF INTEREST
IN GRAIN (DKT #1429)

Farm Group I¹ files this Objections to Macquarie Commodities (USA) Inc.'s ("Macquarie's") Official Form for Assertion of Interest in Grain (Dkt. #1429), and in support states the following:

1. Under Mississippi law, warehouse receipts cannot be issued without an actual delivery of grain into the warehouse from which the warehouse receipts are issued, nor shall a warehouse receipt be issued for a greater quantity than was delivered, nor shall more than one (1) receipt be issued for the same lot of grain. Miss. Code Ann. § 75-44-61 (Rev. 2016). *See also* regulations issued by the Mississippi Department of Agriculture and Commerce, Subpart 2 – Administrative Rules; Chapter 10 Grain Warehouses; sections 110.02 and 110.03. The warehouse receipts in this case violate every one of these mandates.

2. In violation of Mississippi law, Macquarie did not actually deliver any soybeans to the Business Debtors² at any time, although the Macquarie warehouse receipts all indicate the

¹ Farm Group I consists of the following: Adron Farms, Ashton Planting Company, BC Farms, Black Dog Farms, Buck Harris Planting Company, Champion Farms, D.W. Clark, Jr., Tonia T. Clardy, Corley Moses Farms, DLH Farms, David Bratton Farms, Davis and Davis Farms, DeLoach Farms, Dodson Planting Company, Fulgham Farms, Tyler Gilliland, Highlandale Planting Company, Howard Farms, Idlewood Plantation, Jennings Planting Company, KMC Farms, Jacob Lindsey, Lake Lindsey, Little Bee Lake Farms, LLC, Jim Locke, MBM Farms, Inc., O'Neal Planting Company, Poe Planting Company, Fred J. Poindexter, Porter Farms, Prestidge Farms II, Ridgecrest Farms, Scott Farms, Mary Annette Morgan Smith, Tackett Planting Company II, Taylor Farms, Kelsie Fennell Tribble, VK Farms, W B Farms, W.M. Jennings & Son, Westwood Farms, Lawyer Wheeler and Wolf Run Farms.

² Express Grain Terminals, LLC, Express Biodiesel, LLC, and Express Processing, LLC are referred to collectively as "Business Debtors."

delivery method is via “truck.” Macquarie knew the grain it “purchased” from the Business Debtors was commingled while being held at the Business Debtors’ facilities. However, in violation of Mississippi law, Miss. Code Ann. § 75-44-61 (Rev. 1996), there was not sufficient grain on hand to support the totality of receipts.

3. On January 15, 2020, Macquarie entered into a contract to “purchase” 1,000,000 bushels of soybeans from Sidon. (Dkt. #1429, Assertion of Interest, Addendum page 2). The Business Debtors issued warehouse receipt #MS 3149 for 1,000,000 bushels to Macquarie. The Business Debtors agreed to buy those soybeans back on or before May 20, 2021, at an unspecified price. On January 15, 2020, there were 1,953,857 bushels of soybeans on site at Sidon, which was not enough to support warehouse receipts issued to Macquarie and StoneX (StoneX held warehouse receipts #MS 3099 for 300,000 bushels at Sidon; #MS 3102 for 500,000 bushels of soybeans at Sidon; #MS 3115 for 550,000 bushels of soybeans at Sidon). Thus, the Business Debtors were short by 396,143 bushels to support warehouse receipts issued for 2,350,000 bushels of soybeans at Sidon.

4. On July 16, 2021, the Business Debtors purchased 1,000,000 bushels of soybeans at Sidon from Macquarie and simultaneously sold Macquarie 900,000 bushels at Sidon. (Dkt. #1429, Assertion of Interest, Addendum page 3). Macquarie agreed to purchase those 900,000 bushels on or before September 28, 2021. The Business Debtors paid Macquarie \$3,076,800 and issued two new warehouse receipts for 900,000 bushels to be stored at Sidon, ##MS 3157 and 3158. (Dkt.#1429, Assertion of Interest, Addendum page 3 and Exhibit L). On July 16, 2021, the Business Debtors held only 593,737 bushels of soybeans at Sidon and had outstanding warehouse receipts covering 2,985,000 bushels of soybeans. (Business Debtors’ Daily Position Reports, EGT DPR 2020 and EGT DPR 2017 – 2020 and EGT Daily Inventory Roll Forward 9.20.20).

5. On September 21, 2021, the Business Debtors purchased 50,000 bushels of soybeans from Macquarie for \$2,548,570 and issued warehouse receipt #MS 3165 for 50,000 bushels of soybeans to be stored at Sidon. (Dkt. #1429, Assertion of Interest, Addendum page 4).

6. On the day before filing bankruptcy, the Business Debtors issued two warehouse receipts to Macquarie, #MS 3166 for 100,000 bushels of beans to be stored at Sidon and #MS 3168 for 650,000 bushels of beans to be stored at Sidon. Macquarie returned warehouse receipt #MS3165 leaving it with 2 warehouse receipts issued on September 28, 2021 for 750,000 bushels at Sidon.

7. On September 28, 2021, there were a total of 1,484,510 bushels of beans on site at Sidon (Amended Grain Report at page 3, Dkt. #1693), but there were warehouse receipts outstanding for 3,435,000 bushels of beans at Sidon (557 Report Supplement at page 2, Dkt. #1204-1). Thus, there was more than one receipt issued for the same lot of soybeans in violation of Miss. Code Ann. § 75-44-61 (Rev. 1996). As such, there were not enough beans on site to cover the outstanding warehouse receipts issued by the Business Debtors.

8. Not only does Macquarie not have a valid ownership claim in grain stored at Sidon on September 29, 2021, but it also does not have a perfected security interest in that grain.

9. Macquarie's Grain Storage Agreement (Dkt. #1429-1) granted a security interest in "Stored Grain." The agreement defines "Stored Grain" as "Grain stored by Macquarie at an Approved Warehouse pursuant to the terms of this Agreement."

11. Macquarie's warehouse receipts specifically pertained to grain held by the Business Debtors at Sidon. At the time the warehouse receipts were issued, there was not enough grain on site at Sidon to cover Macquarie's warehouse receipts and the warehouse receipts issued to others. As such, there was no "Stored Grain" to which Macquarie's security interest could attach.

12. For a security interest to be enforceable, it must attach to the collateral. A security interest does not attach to collateral unless: (1) value has been given; (2) the debtor has rights in the collateral; and there is an agreement that it attach. *In this case*, there were not enough soybeans at Sidon to cover all of the Business Debtors' issued warehouse receipts and the Business Debtors had no rights in any soybeans to which Macquarie's security interest could attach. As such, Macquarie has no security interest in any "Stored Grain."

13. Farm Group I objects to the Assertion of Interest filed by Macquarie (Dkt. #1429) on the basis that the grain at issue is not property of the bankruptcy estate. A constructive trust arose as a matter of law in favor of the producers/farmers based on the fraud of Express Grain Terminals, LLC in soliciting producers/farmers to sell grain to it in 2021 and fraud committed by Express Grain Terminals, LLC in obtaining its licenses to operate a grain warehouse in 2021, which licenses were revoked and held to be void *ab initio* by the Mississippi Department of Agriculture and Commerce by order dated February 10, 2022.

This 14th day of March, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jim F. Spencer, Jr., do hereby certify that I have caused to be served the above and for going pleading on all parties requesting notice by using the ECF filing system of the court and on the following by service upon the attorney of record or by U.S. Mail postage pre-paid as indicated:

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